

Exhibit A

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1 IN THE UNITED STATES DISTRICT COURT NORTHERN	1 A P P E A R A N C E S (continuing)
2 DISTRICT OF ALABAMA, SOUTHERN DIVISION	2
3	3 OTHERS PRESENT:
4 CIVIL ACTION NO. 2:16-CV-01443-AKK	4 Mr. John Kinney
5	5
6 BLACK WARRIOR RIVERKEEPER, INC.,	6
7 Plaintiff,	7
8 vs.	8
9 DRUMMOND COMPANY,	9
10 Defendant.	10
11	11
12	12
13 DEPOSITION OF DWIGHT HICKS	13
14 Southern Environmental Law Center	14
15 2829 2nd Avenue South, Suite 282	15
16 Birmingham, Alabama 35233	16
17 June 6, 2018	17
18	18
19 REPORTED BY:	19
20 Gail B. Pritchett	20
21 Certified Realtime Reporter,	21
22 Registered Professional	22
23 Reporter and Notary Public	23
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5 Ms. Christina M. Andreen	5
6 and Ms. Sarah M. Stokes	6 INDEX OF EXHIBITS
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1	Plaintiff's Exhibit 40	246	1	S T I P U L A T I O N	
2	Plaintiff's Exhibit 41	248	2	IT IS STIPULATED AND AGREED, by	
3	Plaintiff's Exhibit 42	250	3	and between the parties, through their	
4	Plaintiff's Exhibit 43	252	4	respective counsel, that the deposition of	
5	Plaintiff's Exhibit 44	253	5	DWIGHT HICKS may be taken before Gail B.	
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9	Plaintiff's Exhibit 48	259	9	That it shall not be necessary for	
10	Plaintiff's Exhibit 49	260	10	any objections to be made by counsel to any	
11	Plaintiff's Exhibit 50	261	11	questions, except as to form or leading	
12	Plaintiff's Exhibit 51	262	12	questions, and that counsel for the parties may	
13	Plaintiff's Exhibit 52	263	13	make objections and assign grounds at the time	
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<p>1 I, Gail B. Pritchett, a Certified 2 Realtime Reporter and Registered Professional 3 Reporter of Birmingham, Alabama, and a Notary 4 Public for the State of Alabama at Large, 5 acting as Commissioner, certify that on this 6 date, as provided by the Federal Rules of Civil 7 Procedure of the United States District Court, 8 and the foregoing stipulation of counsel, there 9 came before me at the offices of Southern 10 Environmental Law Center, 2829 2nd Avenue 11 South, Suite 282, Birmingham, Alabama 35233, on 12 the 6th day of June, 2018, commencing at 9:45 13 a.m., DWIGHT HICKS, witness in the above cause, 14 for oral examination, whereupon the following 15 proceedings were had:</p> <p>16</p> <p>17 DWIGHT HICKS, 18 being first duly sworn, was examined and 19 testified as follows:</p> <p>20</p> <p>21 THE COURT REPORTER: Usual 22 stipulations?</p> <p>23 MR. DAVIS: Except for reading and</p>	<p>Page 9</p> <p>1 Q. On how many occasions? 2 A. Twice. 3 Q. What actions or lawsuits were 4 those? 5 A. One of them was a -- it was 6 actually a Corps of Engineers lawsuit that was 7 in the Tuscaloosa County area, around 8 Brookwood, and it was about sedimentation to 9 one of the creeks there. And that was a long 10 time ago, it was back in mid- to late '70s. 11 And then the second time was -- 12 Q. Let me stop you there. About the 13 first one, who were the parties in that case? 14 A. There was -- there were three 15 different coal companies that were involved as 16 defendants. We were one of the late ones that 17 were brought into it because we started mining 18 in the drainage area of this creek later than 19 the other two. One of the other companies was 20 Abston Coal Company, and then the second one 21 was -- oh, the name of it, it was a small 22 company, it escapes me right at the moment. 23 Q. Was that the Abston Construction</p>
<p>1 signing, yes.</p> <p>2</p> <p>3 EXAMINATION BY MR. BROCK:</p> <p>4 Q. Could you state your full name and 5 address for the record, please?</p> <p>6 A. I'm Dwight Russell Hicks, 403 18th 7 Avenue Northwest, Jasper, Alabama 35503.</p> <p>8 Q. What is your date of birth?</p> <p>9 A. 8/25/49.</p> <p>10 Q. So your current age is what?</p> <p>11 A. Old. Sixty-eight.</p> <p>12 Q. Mr. Hicks, I am Barry Brock. I am 13 one of the attorneys for the plaintiff in this 14 case, the Black Warrior Riverkeeper, and we are 15 here today to take a deposition of Drummond 16 Company.</p> <p>17 Are you aware that you have been 18 offered to testify on behalf of Drummond 19 Company today in deposition?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Have you ever testified as a 22 corporate witness for Drummond Company before?</p> <p>23 A. Yes, sir.</p>	<p>Page 10</p> <p>1 case? 2 A. Yes -- yes. I am not sure what 3 you are calling the Abston Construction case, 4 but there was -- 5 Q. It is a case that gets cited in a 6 lot of environmental cases. I don't know if 7 you are aware of that or not. 8 A. No. 9 Q. Was this the case that the 10 Attorney General brought, Mr. Baxley's office? 11 A. No, this was a Corps of Engineers 12 case. I mean, that's how I know it. 13 Q. Okay. So you gave a deposition? 14 A. Yes. 15 Q. Was there a trial? 16 A. Yes. 17 Q. And did you testify at trial? 18 A. Yes. 19 Q. And what was the outcome of the 20 case? 21 A. All three companies had some 22 additional work that had to be done on site. 23 We had to build two additional sediment --</p>

<p style="text-align: right;">Page 13</p> <p>1 sedimentation ponds was the main thing. 2 Like I said earlier, we were kind 3 of a late entry, you know, into the lawsuit 4 because we had started mining in this drainage 5 area. But, you know, we had done it -- we came 6 involved after AS -- AWIC at the time had 7 implemented having to have sediment ponds and 8 all. And we had built sediment ponds to catch 9 our drainage. It turns out there was one area 10 where we did not have adequate drainage 11 control, so we were brought into the lawsuit. 12 The other companies, it was all 13 pre-law drainage, you know, for them -- or the 14 majority of it was anyway. And so there was 15 some sedimentation, you know, to the creek. 16 All three companies -- we had to build ponds, 17 they had to build ponds. And, let's see, the 18 third company, it comes to me, it was 19 Mitchell-Neeley. I think that they both had 20 fines to pay also.</p> <p>21 Q. Was it in Tuscaloosa County? 22 A. Yes, uh-huh. 23 Q. Do you know who the judge was?</p>	<p style="text-align: right;">Page 15</p> <p>1 Tuscaloosa. 2 Q. Do you remember the judge? 3 A. No. 4 Q. Did you testify in trial? 5 A. Yes. 6 Q. And what was the outcome of that 7 case? 8 A. The finding was in JWR's favor. 9 And the main thing that they were -- they were 10 looking for was to gain control over some of 11 their properties as far as being able to mine 12 -- it goes back to Drummond and JWR or U.S. 13 Pipe & Foundry having a long-term agreement for 14 mining -- surface mining, and there was a 15 dispute about whether that agreement had ended 16 or not. And so I guess it was determined that 17 it had ended and so they were able to regain 18 control of some of these properties. 19 Q. Was Drummond forced to reclaim 20 property? 21 MR. DAVIS: Object to the form. 22 You can answer. 23 Q. (BY MR. BROCK:) I was just trying</p>
<p style="text-align: right;">Page 14</p> <p>1 A. Sam Pointer. 2 Q. You said mid-'70s. Can you be 3 more specific than that? 4 A. It was '77, '78, something in that 5 range. 6 Q. Okay. What was the second case 7 where you testified as a corporate 8 representative of Drummond Company? 9 A. It was a -- it was in State Court, 10 and it was a dispute between Drummond and Jim 11 Walter Resources on land holdings, who had 12 control. So that was the main issue of it. 13 Q. What subjects did you testify 14 about in that dispute? 15 A. It was dealing with reclamation 16 that was on one of the sites. 17 (Off-the-record discussion.) 18 Q. (BY MR. BROCK:) Other than Jim 19 Walter and Drummond, were there any other 20 parties in that dispute? 21 A. I do not think so, no. 22 Q. What court was it in? 23 A. It was in State Court in</p>	<p style="text-align: right;">Page 16</p> <p>1 to make sure I understood the answer. 2 Was the dispute about who had to 3 reclaim property or not? 4 A. No. 5 Q. Okay, that's fine. 6 A. No, it was not. 7 Q. It was over who had control over 8 certain -- 9 A. That was the primary thing. 10 Q. -- property that had mining 11 permits for the property, I assume? 12 A. Yes. 13 Q. Where did you grow up and go to 14 high school? 15 A. I grew up in south Texas halfway 16 between Houston and Corpus Christi, along the 17 coastal area, big farming area. I grew up on a 18 rice farm. I graduated from Tidehaven High 19 School in Elmaston, Texas. 20 Q. What big city is that nearest to? 21 A. Big? It is about fifteen miles 22 from a city, which is a town of about fifteen 23 thousand or so.</p>

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<p>1 Q. Okay. Who is your current 2 employer?</p> <p>3 A. Drummond Company, Incorporated.</p> <p>4 Q. Do you have a job title?</p> <p>5 A. Yes. I am Director of Reclamation 6 and Environmental Control.</p> <p>7 Q. How long have you had that title?</p> <p>8 A. Three years -- four years.</p> <p>9 Q. What do your job duties entail?</p> <p>10 A. I look after all reclamation for 11 the company, every place that we have mined, 12 surface mining or the circumspect of 13 underground mining that has requirements for 14 reclamation under the Surface Mining Act or 15 under the State Act with ASMC or with ADEM. I 16 set the direction for reclaiming these 17 properties. And then from the environmental 18 standpoint, anything that deals with 19 environmental monitoring, making sure that we 20 comply with all permit conditions, whether it's 21 for water or for reclamation, I am in charge of 22 that.</p> <p>23 Q. What is your business address?</p>	<p>1 Drummond, is still -- he is still living, the 2 others have deceased. So he and a board of 3 directors and the actual owners of the company, 4 that is all within the family, you know, owned 5 and operated.</p> <p>6 Q. I see. Do you know if Mr. Muncher 7 has any ownership interest in Drummond Company?</p> <p>8 A. No, sir, he does not.</p> <p>9 Q. I am going to put in front of you 10 what we previously marked as Plaintiff's 11 Exhibit 1 to Mr. Muncher's deposition. It is a 12 30(b)(6) Notice of Deposition.</p> <p>13 Have you reviewed that before 14 today, Mr. Hicks?</p> <p>15 A. I did -- I did scan over Mr. 16 Muncher's deposition.</p> <p>17 Q. The transcript of his deposition?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And my question here is 20 have you reviewed this notice before today?</p> <p>21 A. Yes, sir. I looked over these 22 things --</p> <p>23 MR. DAVIS: You answered his</p>
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<p>1 A. 3000 Highway 78 East, Jasper, 2 35502.</p> <p>3 Q. Is that the same building Mr. 4 Muncher works in?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Who is superior to who in that 7 office?</p> <p>8 A. He has been my supervisor for the 9 last year.</p> <p>10 Q. Do you have any ownership interest 11 in Drummond Company?</p> <p>12 A. No, sir.</p> <p>13 Q. Have you ever?</p> <p>14 A. No, sir.</p> <p>15 Q. Who owns Drummond Company?</p> <p>16 A. The Drummond family. The company 17 started in the late '40s, and as they -- very, 18 very small company, but Heman Drummond was the 19 originator of it. He had seven children. Five 20 of the boys, you know, were the primary people 21 that directed it, you know, that got everything 22 off and running for all of those years. And 23 there is one of -- one of the boys, John</p>	<p>1 question.</p> <p>2 A. Yes.</p> <p>3 Q. (BY MR. BROCK:) All right. And 4 you will notice that there are thirty-eight 5 different subjects of testimony that we listed 6 in the notice; do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Do you have the 9 ability to testify on those subjects?</p> <p>10 MR. DAVIS: Object to the form and 11 the --</p> <p>12 A. I can some of it, yes.</p> <p>13 Q. (BY MR. BROCK:) All right. If I 14 ask you a question that relates to any of these 15 subjects and you don't have any knowledge or 16 information or haven't done any research that 17 would inform you, just tell me that and we will 18 deal with that.</p> <p>19 A. Sure. Okay.</p> <p>20 Q. Are you the person at Drummond 21 most knowledgeable about these subjects?</p> <p>22 MR. DAVIS: Object to the form.</p> <p>23 I'm not sure if he knows what anybody else</p>

<p style="text-align: right;">Page 21</p> <p>1 knows. We have tendered witnesses, and we can 2 say this outside if you want, because I'm not 3 trying to influence the witness.</p> <p>4 MR. BROCK: Well, I think it is a 5 fair question.</p> <p>6 Q. (BY MR. BROCK:) Do you think 7 you're the person at Drummond most 8 knowledgeable about these subjects?</p> <p>9 A. What subjects? I mean, just --</p> <p>10 Q. Just the thirty-eight --</p> <p>11 MR. DAVIS: Object to the form.</p> <p>12 Q. -- subjects that we have listed. 13 And in fairness, for the record, your attorney 14 and Drummond have filed objections to some of 15 these.</p> <p>16 MR. DAVIS: And object to the 17 question. Answer to the best of your ability.</p> <p>18 A. Drummond bought Alabama 19 By-Products at the end of 1985, and so the vast 20 majority of what's being examined here today is 21 going to be on areas that would have been prior 22 to Drummond buying it. So just about all of 23 it, you know, it had already been disturbed, it</p>	<p style="text-align: right;">Page 23</p> <p>1 what was Drummond contracted to do by ABC? 2 A. To do some -- it was alkaline 3 treatment on some of their porous refuse. From 4 having read through this, you know, it is going 5 to be on an area that is described as -- where 6 soiling took place. Most of it would be 7 post-law or it would be regulatory controlled 8 area that -- where they were going to put soil 9 back on it and it needed to be treated. It was 10 some outslopes, some flat area.</p> <p>11 Q. Was that part of the reclamation 12 process?</p> <p>13 A. It was a part of a program, you 14 know, that they had developed, you know, in all 15 of this workup. You know, some of it was 16 covered under the PELA report, some of it was 17 covered under what Dr. Pettry had worked up. 18 But, you know, that was the extent of my 19 involvement, you know, as far as the -- on 20 these earlier areas.</p> <p>21 Q. Who else that worked for Drummond 22 during that time frame was involved with that 23 project on the Maxine property in the '84/'85</p>
<p style="text-align: right;">Page 22</p> <p>1 had -- all of it had been mined, reclamation 2 was ongoing, you know, before Drummond had any 3 involvement whatsoever. So, you know, there's 4 a lot of this that I am not going to know 5 anything about. Some of it, you know, it would 6 be after the fact. You know, the extent of my 7 involvement, you know, the only time that prior 8 to our purchasing, you know, ABC in '85, they 9 did -- ABC did contract with Drummond to do 10 some treatment work for them on one of the 11 sites.</p> <p>12 Q. Let me stop you there. What year 13 was that?</p> <p>14 A. That would have probably been late 15 part of '84 or maybe the early part of '85.</p> <p>16 Q. Were you personally involved in 17 that work?</p> <p>18 A. Yes, as far as they did talk to me 19 about getting things set up as Drummond 20 contracting it, and so there was a small 21 portion of it, you know, that I did go out and 22 see a small part of this area, yes.</p> <p>23 Q. In that 1984 to '85 time frame,</p>	<p style="text-align: right;">Page 24</p> <p>1 time frame?</p> <p>2 A. That would be it, Drummond -- now 3 or what?</p> <p>4 Q. Anybody that worked for Drummond 5 that might have worked with you on that project 6 you just described on the property in '84/'85 7 time frame?</p> <p>8 A. Nobody. And the reason I say that 9 is Alabama By-Products, you know, they had 10 their -- they had their total program and it 11 involved engineers, land people, reclamation 12 people.</p> <p>13 Q. Sure.</p> <p>14 A. They did the majority of their own 15 work or they contracted out, you know, their 16 own work. So then later on, you know, once 17 Drummond bought ABC, you know, Drummond 18 maintained an underground mining division, you 19 know, and it would have been what was 20 previously Alabama By-Products. And so those 21 people continued mining, doing reclamation, all 22 of those kind of activities as a separate 23 entity from what I was in. I was -- primarily</p>

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<p>1 at that time I was involved in -- and we were 2 primarily surface coal miners, so that was 3 where just about all of my emphasis was. 4 Q. All right. Let me ask you a few 5 questions about that.</p> <p>6 Was this agreement between ABC and 7 Drummond reduced to writing?</p> <p>8 A. I have no idea.</p> <p>9 Q. Have you ever seen a written 10 contract or agreement --</p> <p>11 A. No, sir.</p> <p>12 Q. -- that documented that?</p> <p>13 A. No, sir.</p> <p>14 Q. If I am understanding your 15 testimony, you were the only Drummond employee 16 that did any work pursuant to that agreement?</p> <p>17 A. I believe that's correct, yes.</p> <p>18 Q. And if I also understand what you 19 just said, after the merger at the end of 1985, 20 the ABC entity essentially became an 21 underground mining division of Drummond?</p> <p>22 A. Yes, sir, uh-huh.</p> <p>23 Q. And did ABC employees come over to</p>	<p>1 association and there was an underground mining 2 association. And, you know, it was finally 3 combined sometime in the 1980s, so our contact 4 between the two is fairly limited. But once a 5 year, you know, there was a joint meeting, you 6 know, so I would get to see some of the folks 7 then.</p> <p>8 Q. Who were those folks?</p> <p>9 A. Well, one that I would remember 10 would be Jack McDuff. Occasionally I would see 11 Moyer Edwards.</p> <p>12 Q. I understand he is deceased; is 13 that accurate or do you know?</p> <p>14 A. I don't know. I would think that 15 that's probably true, just because, you know, 16 he was a fairly old gentleman, you know, 17 whenever I was having primary contact with him, 18 you know, almost four decades ago.</p> <p>19 Q. When was the last time that you 20 spoke to Mr. Musick?</p> <p>21 A. Oh, probably --</p> <p>22 Q. Is it more than ten years ago?</p> <p>23 A. Yes.</p>
Page 26	Page 28
<p>1 Drummond at that time?</p> <p>2 A. They were maintained -- no. They 3 became Drummond employees, but they operated in 4 an underground mining division. Drummond was a 5 surface coal mining company just totally up to 6 until that point, and so we had a surface 7 division and an underground division.</p> <p>8 Q. Okay, I am with you. Can you 9 remember the names of any people from ABC that 10 came over to Drummond as part of that new 11 underground mining division?</p> <p>12 A. There were dealings that I would 13 have like on -- Tom Musick would be -- he was 14 an engineer with them, so probably my primary 15 contacts would have been with him. There were 16 others that, you know, that I met, talked to, 17 you know, on occasion.</p> <p>18 Q. Do you remember any names?</p> <p>19 A. Like, you know, we -- a lot of 20 times, you know, our primary contacts would be 21 whenever we would have like association 22 meetings and all. And for a long time, you 23 know, there was a -- there was a surface mining</p>	<p>1 Q. So, in other words, you haven't 2 spoken with him about this lawsuit?</p> <p>3 A. No.</p> <p>4 Q. Or about the events that took 5 place in the '70s or '80s on the Maxine site?</p> <p>6 A. Right. I have not spoken to 7 anybody, you know, outside of just -- outside 8 of Drummond -- present day Drummond personnel 9 pertaining to this lawsuit.</p> <p>10 Q. I am going to ask you about a few 11 people whose names are prominent in these 12 documents. You mentioned Mr. Musick and Jack 13 McDuff; have you spoken to him at all about 14 this lawsuit?</p> <p>15 A. No, sir.</p> <p>16 Q. Do you know if he is still alive?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know where he lives?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. Doug Cook, have you spoken 21 to him about this case?</p> <p>22 A. I have not.</p> <p>23 Q. Do you know who he is?</p>

	Page 29		Page 31
1	A. I know who he is, yes.	1	did come out there. I remember him being out
2	Q. Michael Butts?	2	there on one occasion whenever we were applying
3	A. Yes, I know Michael Butts. Yes,	3	some of the alkaline materials, you know, that
4	sir.	4	he had suggested to be applied, you know, to
5	Q. Does he currently work for	5	the site.
6	Drummond?	6	Q. Was he a contractor for Drummond?
7	A. No, sir.	7	A. He would have been a contractor
8	Q. Have you talked to him about this	8	for ABC. And I didn't -- all of that would
9	case?	9	have been prior to Drummond purchasing. I do
10	A. He was an employee at Drummond	10	not know if that continued after Drummond
11	when this case was originally filed, so, yes,	11	purchased ABC. If it did, it would have been
12	there was early on -- you know, there were some	12	covered under the underground mining division.
13	discussion with Mike Butts.	13	I have no knowledge of that.
14	Q. So he was an employee of Drummond	14	Q. Was he ever a Drummond employee?
15	in September 2016? That's when the case was	15	A. No, sir. No, sir.
16	filed.	16	Q. All right. In the deposition
17	A. Yes.	17	notice, there was also a request to produce any
18	Q. And he has since left?	18	documents that were relevant to those topics,
19	A. Yes.	19	And in this case, Drummond has produced about
20	Q. Did he retire, was he fired, or do	20	three thousand seven hundred and thirty-five
21	you know?	21	documents.
22	A. I don't know the circumstances.	22	Did you play any role in gathering
23	Q. How about Lois George, do you know	23	those documents up?
	Page 30		Page 32
1	who she is?	1	A. People that I work with at the
2	A. I know who she is, yes.	2	Drummond office, you know, we did get a request
3	Q. All right. Who does she work for?	3	through our legal people to pull any and all
4	A. She works for P. E. LaMoreaux &	4	documents that related to Maxine Mine and send
5	Associates.	5	it to Birmingham to the legal people.
6	Q. Did she do some work on the Maxine	6	Q. Who worked on that task for you?
7	site?	7	A. Oh, most of it would have been --
8	A. Based on what I have read, yes.	8	it would have been people that would have been
9	Q. Did you interact with her in the	9	in our data resources in our storage area. We
10	1980s when PELA was working on the site?	10	just have a file system and we asked them to go
11	A. No, sir.	11	through and identify anything that tied to
12	Q. Have you talked to her at all	12	Maxine, and so they would go and pull the
13	about this case?	13	banker boxes and bring them down. And I looked
14	A. No, sir.	14	at just -- I looked at all of the boxes to make
15	Q. What about Mr. Pettry that you	15	sure that it was Maxine-related material, and
16	mentioned, have you talked to him about this	16	if it was we just boxed it up and sent it to
17	case?	17	the legal people.
18	A. No, sir.	18	Q. Was that storage facility in
19	Q. Did you interact with him some	19	Jasper?
20	during the '80s about work on the site?	20	A. Yes, sir.
21	A. I saw him on site one time. He	21	Q. Is it at the office there that you
22	was -- I don't know if he still is, but he was	22	gave the address for earlier?
23	a professor at Mississippi State. So, yes, he	23	A. Yes, sir, uh-huh.

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<p>1 Q. Did you read through the documents 2 -- at what level of detail did you read through 3 those documents?</p> <p>4 A. Very minimal. It was primarily to 5 make sure that it was Maxine-related. And if 6 it was, then, you know, we just boxed them -- 7 and we already knew that it was going to be 8 Maxine-related, you know, just based on what 9 would have been on the document sheet. And so 10 just made sure that they -- that what was on 11 the sheet, you know, that it said it was 12 Maxine, that it was Maxine. And if it was, we 13 left it in the original dusty boxes and sent it 14 to the legal department.</p> <p>15 Q. Okay. Since you sent those 16 documents to Birmingham, have you reviewed any 17 of them?</p> <p>18 A. I would say yes.</p> <p>19 Q. In preparation for the deposition?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Do you remember any in particular 22 that you reviewed?</p> <p>23 A. There were quite a few, so --</p>	<p>1 at the site?</p> <p>2 A. Nothing. This was strictly -- we 3 went down there to do some road repair work 4 that would make it easier to access, you know, 5 the area with a vehicle.</p> <p>6 Q. Is this the lower road that comes 7 in by the river, by the lower dam?</p> <p>8 A. Yes, sir.</p> <p>9 Q. I can testify that that needed 10 some work, having been stuck in the mud there.</p> <p>11 A. That big mud hole we had there, 12 that was the main thing we corrected.</p> <p>13 Q. Okay. Well, that's good to know.</p> <p>14 Was there any other work actually done on the 15 site?</p> <p>16 A. No, sir.</p> <p>17 Q. Did you do any sampling when you 18 were there?</p> <p>19 A. No, sir.</p> <p>20 Q. Did you do any other kind of site 21 assessment?</p> <p>22 A. No, sir.</p> <p>23 Q. How many times have you been on</p>
Page 34	Page 36
<p>1 Q. Did you review these exhibits to 2 Mr. Muncher's deposition?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Did you review the permit map?</p> <p>5 A. Yes.</p> <p>6 Q. And did you familiarize yourself 7 with the site through review of these 8 documents?</p> <p>9 A. I wouldn't say that I 10 familiarized. It is a lot of information.</p> <p>11 Q. Sure.</p> <p>12 A. So I looked through a lot of this 13 in a pretty general way, right.</p> <p>14 Q. When was the last time you were on 15 the Maxine Mine site?</p> <p>16 A. I was there this Monday.</p> <p>17 Q. What were you doing there?</p> <p>18 A. We were doing some road work to 19 get better access in to part of it, and I just 20 went down there to make sure that people that 21 work for me, you know, did the remedial work 22 that I wanted done.</p> <p>23 Q. What remedial work is going on now</p>	<p>1 the site since the notice letter was issued in 2 this case in June of 2016?</p> <p>3 A. Probably in a range of ten times.</p> <p>4 Q. And what were you typically doing 5 there on those visits?</p> <p>6 A. Just becoming more familiar, you 7 know, with the site.</p> <p>8 Q. Have you done any sampling on the 9 site on those ten or so visits?</p> <p>10 A. No, sir, other than, you know, 11 taking some just pH -- pHs of some of the 12 water, you know, that would be in and around 13 the site.</p> <p>14 Q. Did you take pH readings in some 15 of the streams on the site?</p> <p>16 MR. DAVIS: Object to the form and 17 foundation. You can answer.</p> <p>18 A. I am hard-pressed to say that, you 19 know, there are streams on the site.</p> <p>20 Q. (BY MR. BROCK:) Some of the water 21 bodies?</p> <p>22 A. Some of the water that was on the 23 site, yes.</p>

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<p>1 Q. Did you record those somewhere? 2 A. No, sir. 3 Q. What did you take the readings 4 with? 5 A. Just a hand-held pH meter. 6 Q. Did you check conductivity as 7 well? 8 A. No, sir. 9 Q. What kind of pH readings did you 10 typically see? 11 A. Oh, it ranged from 3.2 to 7.5, in 12 that range. 13 Q. Where were the 3.2 readings? 14 A. Most of it was going to be -- if 15 you are looking upstream from the river area, 16 most of it would be on the right-hand side, 17 which in the documents and all is going to be 18 described as the eastern ditch area. 19 Q. Did you actually take the samples 20 in the east ditch? 21 A. Just in the area where the east 22 ditch, you know, based on the maps and all, you 23 know, would have been. You know, there's</p>	<p>1 A. Yes, it could be considered as the 2 toe of the old coarse refuse, yes. And 3 basically, I mean, it's -- I think the 4 follow-up to what your original question was, 5 you know, that's about the only time that you 6 are going to have any water that's going to be 7 there is going to be the results of stormwater 8 from rainfall events. The rest of the time, 9 you know, there is -- I have seen very little, 10 if any, drainage that would be coming down 11 through there. 12 Q. In a rain event, though, would 13 there be drainage -- surface water in what 14 remains of the east ditch? 15 A. In the general area where the east 16 ditch would have been, yes, sir. 17 Q. Does the east ditch still have a 18 bed and banks? 19 A. Not that I can tell, no, sir. 20 Q. How can you identify it? 21 A. Just from looking at the maps, 22 knowing basically, you know, where it showed it 23 to be. And you could see just kind of the</p>
Page 38	Page 40
<p>1 remnants of the ditch that is still there and, 2 you know, some of it is -- it's no longer 3 active. Just segments of it you can still see 4 where it is or was. 5 Q. Does it still convey runoff on the 6 site? 7 MR. DAVIS: Object to the form and 8 foundation. I am just trying to figure out 9 what "it" is. 10 Q. (BY MR. BROCK:) The east ditch, 11 what is left of the east ditch. 12 A. The east ditch is not operable the 13 way it appears that it was originally set up to 14 operate. But there is going to be the poor 15 quality drainage, you know, that is going to 16 come off from the old pre-law coarse refuse is 17 going to be on the right-hand side looking 18 upstream. Well, then, you know, it comes off 19 of that and comes down to where the east ditch, 20 you know, would have been basically at the base 21 of that. 22 Q. Would that be referred to as the 23 toe of the --</p>	<p>1 rough configuration of what might have been a 2 ditch line that would have run up through the 3 area that would have been at the toe, you know, 4 of the old coarse refuse area. 5 Q. Have you taken any photographs of 6 it? 7 A. I took probably -- yeah, a few 8 photos just with my phone. 9 Q. Have you given those to Mr. Davis? 10 A. No, sir. 11 Q. Will you do that for us? 12 A. I don't even know if I still have 13 any of them. 14 Q. Will you look and see if you do? 15 A. Sure, uh-huh. 16 Q. While we are on the subject of 17 ditches, I am going to do this a little bit out 18 of the order that I intended, but, Mr. Hicks, 19 are you aware that we, the parties in this 20 lawsuit, made some visits to the site last 21 summer? 22 A. Yes, sir. 23 Q. You weren't present for any of</p>

Dwight Hicks**11 (41 - 44)**

<p style="text-align: right;">Page 41</p> <p>1 those visits, were you? 2 A. No, sir. 3 Q. I don't remember seeing you there, 4 anyway. 5 A. No, sir. 6 Q. And we took some photographs while 7 we were out there on that visit; have you 8 looked at any of those photographs before? 9 A. No, sir. 10 (Plaintiff's Exhibit 1 was marked 11 for identification.) 12 Q. Okay. I am going to hand you what 13 I am marking as Exhibit 1 to your deposition. 14 This is a photograph that was taken on June 15 12th, 2017 when we were on the site. 16 A. Uh-huh. 17 Q. It appears to be some sort of 18 drainage channel or ditch. Can you identify 19 what is shown in that photograph? 20 A. Not a hundred percent, no, sir. 21 Q. What percent can you identify it? 22 A. I would be sixty percent, you 23 know, sure of where this is. I have seen -- I</p>	<p style="text-align: right;">Page 43</p> <p>1 MR. DAVIS: Okay. Thank you. 2 Q. (BY MR. BROCK:) Mr. Hicks, what I 3 am going to do here, just so we have a 4 reference point, I am going to put in front of 5 you Exhibit 7 to Mr. Muncher's deposition. 6 A. Okay. 7 Q. It is a two-page exhibit that has 8 a figure of the site. Have you seen these two 9 pages before? 10 A. Just in his -- in his deposition, 11 yes, sir. 12 Q. Did you ever see these back in the 13 '80s when PELA was working on the site? 14 A. No, sir. 15 Q. Okay. I am going to put the 16 bottom page on top, because it is in color and 17 a little bit easier to see, so that as we go 18 through some of these photos maybe you can tell 19 us by reference to this page where you think 20 they are; does that make sense? 21 A. Okay. 22 Q. And so Exhibit 1 that we looked at 23 you said you believe would be in the area of</p>
<p style="text-align: right;">Page 42</p> <p>1 have seen this. 2 Q. Where do you think it is? 3 A. I'm thinking that this would 4 probably be along the eastern side looking 5 upstream. 6 Q. The eastern side of what? 7 A. Well, I would think that to the 8 right of this is going to be slopes, and there 9 is going to be old coarse refuse that would be 10 up this slope. 11 Q. So would this be in the area of 12 the east ditch? 13 A. In the general area of where I 14 would think that the east ditch would be, yes. 15 Q. Is this part of what remains of 16 the east ditch? 17 A. That I'm not sure of, but I would 18 say that this is in the general area of where 19 the east ditch would be. That's what I'm 20 thinking anyway. 21 MR. DAVIS: What date did you give 22 for that? 23 MR. BROCK: That's June the 12th.</p>	<p style="text-align: right;">Page 44</p> <p>1 the east ditch? 2 A. Yes, sir. 3 Q. And that's the east ditch that is 4 shown on this page, which is Drummond 2817? 5 A. Okay. 6 Q. Correct? 7 A. Yes, sir. 8 Q. Has Drummond performed any 9 maintenance on this ditch that is shown in that 10 photo 1? 11 A. No, sir. 12 Q. And I mean since it took control 13 of the property in 1986. 14 A. No, sir. Let me clarify that. 15 Q. Sure. 16 A. I had no involvement -- if there 17 was any work done, I had no involvement in it. 18 But as I had mentioned in some of your 19 questions earlier, there was an underground 20 mining division that would have been ABC that 21 would have still been fully functional, you 22 know, in the mid- to late '80s. And so it's 23 possible that some work could have been done,</p>

Dwight Hicks**12 (45 - 48)**

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<p>1 but I'm not aware of any and I don't think that 2 there would have been any work done by even ABC 3 people.</p> <p>4 Q. After what year?</p> <p>5 A. After the acquisition by Drummond. 6 (Plaintiff's Exhibit 2 was marked 7 for identification.)</p> <p>8 Q. Let me show you what I have marked 9 as Exhibit 2 to the deposition. This is 10 another photo taken on June 12th, 2017. Do you 11 recognize what is shown in that photo?</p> <p>12 A. Well, it looks very similar, you 13 know, to this (indicating).</p> <p>14 Q. So Exhibit 1?</p> <p>15 A. Yes. I can't -- I can't tell you 16 specifically, you know, where this would be.</p> <p>17 Q. Do you know if this is the east 18 ditch or not?</p> <p>19 A. No, sir, I do not.</p> <p>20 Q. Does this appear to you to be a 21 man-made drainage ditch?</p> <p>22 A. It's really hard to tell. I don't 23 know.</p>	<p>1 A. No, sir. 2 Q. And you don't know where on the 3 property this is?</p> <p>4 A. No, sir. 5 Q. Does it appear to you to be a 6 man-made ditch?</p> <p>7 A. It's difficult to tell. 8 Q. You can't tell from looking at it?</p> <p>9 A. No, sir. 10 Q. What is that material that is in 11 the bed of the ditch shown in that photo?</p> <p>12 A. It's got rock in it. And from 13 some of the coloration, you know, some of that 14 could be natural material, natural rock that 15 would be in any kind of little drainage area 16 like that, or it could be, you know, some 17 coarse refuse material.</p> <p>18 Q. Is there some mine waste in that 19 material that you see?</p> <p>20 MR. DAVIS: Object to the form and 21 foundation. You can answer.</p> <p>22 A. I can't tell specifically, you 23 know, from looking at this.</p>
Page 46	Page 48
<p>1 Q. So you can't tell one way or the 2 other by looking at the photo if it's man-made?</p> <p>3 A. No, sir.</p> <p>4 Q. The east ditch when it was 5 constructed, was it a man-made diversion ditch?</p> <p>6 A. Well, since it was a -- it was a 7 part of a plan and it would have been on coarse 8 refuse-related material, I would have to say 9 yes, you know, that it would be man-made, yes.</p> <p>10 Q. Do you know who constructed it?</p> <p>11 A. No, sir, I do not.</p> <p>12 (Plaintiff's Exhibit 3 was marked 13 for identification.)</p> <p>14 Q. All right. I am handing you what 15 I marked as Exhibit 3 to your deposition. Do 16 you recognize the structure in this picture?</p> <p>17 A. I have seen an area down there 18 that looked very similar to this. As far as 19 being able to pinpoint where this is, no, I 20 cannot tell you that.</p> <p>21 Q. With reference to this figure we 22 are looking at, do you know what ditch this may 23 be?</p>	<p>1 Q. (BY MR. BROCK:) Is there natural 2 rock in the area that is that blackish-gray 3 color?</p> <p>4 A. Could be. More of it is -- of the 5 rock there is going to be sandstone base, so it 6 would typically be -- some of the lighter- 7 colored material that you see there could be 8 sandstone.</p> <p>9 Q. Could the darker-colored material 10 be mine waste?</p> <p>11 A. Yes, it could be, yes, sir.</p> <p>12 Q. Does this diversion ditch in this 13 photo have banks?</p> <p>14 A. Well, it -- it's hard to tell if 15 that's banks or if that's just a toe of an 16 embankment here.</p> <p>17 (Plaintiff's Exhibit 4 was marked 18 for identification.)</p> <p>19 Q. I have handed you what I have 20 marked as Exhibit 4 to your deposition. This 21 is a photo from August 1st, 2017 on another 22 visit we made.</p> <p>23 A. Uh-huh.</p>

<p style="text-align: right;">Page 49</p> <p>1 Q. Can you tell where that ditch is? 2 A. Was taken? No, sir. I have seen 3 area down there that look very similar to this 4 but, you know, it's -- several different places 5 look similar to that. So, no, I couldn't tell 6 you exactly where that is. It has got good 7 vegetation that is coming in on all of it. 8 Q. It has trees that look like they 9 are falling into it as well, doesn't it? 10 A. Well, that is very normal. 11 Q. Okay. Do you see the dark 12 material that is in the -- to the right side of 13 the photograph on the -- 14 A. Yes, sir. 15 Q. -- ground there? 16 Does that look like mine waste to 17 you? 18 A. It could possibly be, yes, sir. 19 Q. So you can't tell from looking at 20 this if it is any of the ditches shown on 21 Exhibit 7? 22 A. No, sir. 23 Q. But you do recognize this as being</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. What was your degree in? 2 A. I have a bachelor's and master's 3 degree in forest science. 4 Q. Are you an engineer? 5 A. No, sir. 6 Q. Are you a hydrologist? 7 A. No, sir. I am a forester. 8 Q. Are you a geologist? 9 A. No, sir. 10 Q. Or a biologist? 11 A. No, sir, a forester. 12 Q. All right. And generally what 13 skill set does a forester use with that 14 education? 15 A. Well, some of all of the things 16 that you mentioned in addition to being a 17 forester. But, you know, first and foremost it 18 would be about trying to manage and sustain 19 forest products, you know, to maximize 20 productivity. It involves doing things in 21 environmentally acceptable ways. It has a lot 22 to do with earth sciences. It's a -- I would 23 say that even though it is a specific degree,</p>
<p style="text-align: right;">Page 50</p> <p>1 on the Maxine property? 2 A. It looks very much like some of 3 the area that would be on the Maxine property 4 that is going to be in this area (indicating), 5 yes, sir. 6 Q. All right. Before we move into 7 more details about the site, let me back up and 8 ask you a little bit about your educational 9 background. 10 A. Yes, sir. 11 Q. What year did you graduate from 12 high school? 13 A. In 1967. 14 Q. And that was in Texas? 15 A. Yes, sir. 16 Q. And did you go to college after 17 that? 18 A. Yes, sir. 19 Q. Where did you go to school? 20 A. I went to Stephen F. Austin State 21 University in Nacogdoches, Texas. 22 Q. Did you earn a degree? 23 A. Yes, sir.</p>	<p style="text-align: right;">Page 52</p> <p>1 within a lot of the coursework that goes into 2 it, you know, touches on a lot of these 3 different areas. 4 Q. Have you had any additional formal 5 educational training after the master's? 6 A. No, sir. 7 Q. Do you have any certificates or 8 other I guess academic acknowledgments or 9 achievements? 10 A. I have gone to continuing 11 education classes and things like that, but as 12 far as having additional education or 13 certificates, no, other than continuing 14 education. I mean, you get a certificate with 15 all of those. 16 Q. Right. What year did you finish 17 the master's? 18 A. In 1973. 19 Q. Did you go to work after that? 20 A. Yes, sir. First job was at Auburn 21 University. I was hired as a -- to do research 22 work. I was hired as a research associate. 23 And the work that -- the main project that I</p>

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<p>1 was hired to work on dealt with coal mine 2 reclamation work, to come up with better 3 methods of doing reclamation, grading, 4 re-vegetation on surface coal mining sites. 5 And it was set up as a ten-year project through 6 the School of Forestry at Auburn. Dr. Sam Lyle 7 was my project leader. He is one of the 8 foremost reclamationists in the country.</p> <p>9 MR. DAVIS: Can we ask how to 10 spell that name?</p> <p>11 MR. BROCK: Sure.</p> <p>12 A. Lyle, L-y-l-e.</p> <p>13 Q. (BY MR. BROCK:) How long did you 14 work on that project?</p> <p>15 A. Two years.</p> <p>16 Q. Did you go to mine sites around 17 the state as part of that?</p> <p>18 A. Yes, sir, got to know all of the 19 different coal mining companies that were -- 20 that had membership in what at that time was 21 the Alabama Surface Mining Reclamation Council.</p> <p>22 Q. Did you perform any actual 23 reclamation work?</p>	<p>1 the amendment work, you know, that was 2 required.</p> <p>3 Q. Did Drummond fund any of the 4 research?</p> <p>5 A. Well, indirectly. I mean, it was 6 all funded through the Reclamation Council, and 7 Drummond was a member of the Council, so they 8 paid dues and all into it, and that went toward 9 funding this project, yes.</p> <p>10 Q. Outside of their dues, do you know 11 if they funded it in any other way?</p> <p>12 A. The only way it would have been, 13 as I have described, I call it in-kind work. 14 They were very helpful as far as providing 15 dozers and earth moving equipment to grade 16 areas the way we needed it, you know, the way 17 we thought things needed to be done to maximize 18 grading and reclamation. So, yes, they 19 provided in-kind services.</p> <p>20 Q. I had asked you a second ago if 21 you just remember any of the main mine sites 22 you worked on. You don't have to list them 23 all, by any means.</p>
Page 54	Page 56
<p>1 A. Yes. One of the main reasons that 2 I was hired is because I came from an 3 agricultural background, I knew how to operate 4 equipment. And so, you know, as a research 5 associate, you are going to start out doing a 6 lot of grunt work. So, yes, we were putting in 7 reclamation research plots on a lot of these 8 different coal mines.</p> <p>9 Q. Do you remember what mines you 10 worked on?</p> <p>11 A. Several of them, yes, uh-huh. We 12 had -- some of our main plots -- some of our 13 main plots were on Drummond property. Drummond 14 was one of the -- probably the biggest 15 supporters of the Reclamation Council and 16 spearheaded, you know, trying to come up with 17 better methods of doing reclamation, doing 18 re-vegetation on coal mines. And so they were 19 -- they were very involved in and were willing 20 to provide their mine sites, not only provide 21 the sites but, you know, actually provide some 22 of the work as far as getting areas graded the 23 way we wanted, do some of the re-vegetation,</p>	<p>1 A. Well, like in Cullman County, 2 there was what was called the Arkadelphia Mine, 3 it was a Drummond mine. We had a large set of 4 plots, re-vegetation -- grading and 5 re-vegetation plots there. There was a large 6 set that was put in in Bibb County. It would 7 have been at one of Burgess Mining Company's 8 mines in Bibb County. There was one -- a large 9 set that was put in in Jefferson County that 10 would have been around Adger. That would have 11 been on Taylor Coal Company mine site. There 12 was another large set that was put in in Walker 13 County at the Cedrum Mine --</p> <p>14 Q. When you say a large set, what do 15 you mean by that?</p> <p>16 A. It would be many, many acres that 17 would go into these plots. And when I say set, 18 you know, it would be divided up, you know, 19 into groupings, plots, and it would always have 20 a minimum of three sets, three identical sets, 21 you know, where you could do statistical 22 analyses on these -- on the different things 23 that were put into these units, you know, where</p>

<p style="text-align: right;">Page 57</p> <p>1 you could -- it was all scientific stuff. So 2 you could statistically say where the different 3 things was -- what was best, what was worse, 4 that type of thing.</p> <p>5 Q. Were any of those underground 6 mines?</p> <p>7 A. This would all have been on 8 surface mines.</p> <p>9 Q. Were there any new reclamation 10 techniques that you all were implementing as 11 part of that program?</p> <p>12 A. Oh, yes. Yeah. Grading 13 techniques, we made recommendations, you know, 14 for the best way to grade areas. We made 15 recommendations on what would have been the 16 best vegetation mixes, whether it was either 17 grasses and legumes or trees, what would do 18 best on different kind of sites. And that's 19 why we spread all of this work around, you 20 know, over the whole coal region of Alabama was 21 to make sure that we cover in all of the 22 different kind of materials that the mining 23 companies would come in contact with.</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Everything that I have done has 2 been related to reclamation and environmental 3 control at either the manager level or here 4 more recently at the director level.</p> <p>5 Q. Have you read the notice letter 6 that was served in this case? Do you know what 7 I mean when I refer to that?</p> <p>8 A. I think I know, but --</p> <p>9 Q. So this lawsuit involves claims 10 under two federal statutes, the Clean Water Act 11 and the Resource Conservation Recovery Act, and 12 they both require that a citizen plaintiff 13 provide notice before you can file a lawsuit, 14 you have to wait sixty days.</p> <p>15 A. Uh-huh.</p> <p>16 Q. So we submitted a letter to 17 Drummond back in June of 2016. Have you 18 reviewed that letter?</p> <p>19 A. Sounds like it is probably 20 something that I would have reviewed. I would 21 say yes.</p> <p>22 Q. Have you reviewed the Complaint 23 that was filed in court in the case?</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And what did you do after 2 that two years at Auburn?</p> <p>3 A. I was offered a job at Drummond 4 Company, and so I left Auburn. Hated to leave 5 Auburn. Loved Auburn. Wonderful place to 6 live, wonderful place to work, loved my project 7 leader, all of that good stuff. That was a 8 wonderful part of my life. But, you know, this 9 project was set up for a maximum of ten years, 10 and from talking to my major professor, he said 11 hey, I hate for you to leave, but, you know, 12 unless you want to continue your education and 13 get your Ph.D. and become a professor at Auburn 14 or somewhere else, he said if you don't have 15 interest in that, well, then this offer that 16 Drummond has made you would probably be better 17 for you. So I left Auburn and went to work 18 with Drummond, and I have been here ever since.</p> <p>19 Q. And what year was that?</p> <p>20 A. That would have been the latter 21 part of '74.</p> <p>22 Q. What positions have you held at 23 Drummond over the years?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I'm sure I have, yes, sir.</p> <p>2 Q. Have you reviewed Drummond's 3 answer?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And there are some interrogatory 6 responses that you signed; do you remember 7 signing those?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. We may get into those a 10 little bit later, but did you do some work to 11 obtain answers to those interrogatories?</p> <p>12 A. Work? I mean --</p> <p>13 Q. Research --</p> <p>14 A. Well, research my brain? Yes.</p> <p>15 Q. Okay. Have you reviewed any 16 sampling data related to the site?</p> <p>17 A. No, sir.</p> <p>18 Q. None at all?</p> <p>19 A. No, sir.</p> <p>20 Q. We will go ahead and get this out 21 of the way: Are you aware that Drummond has 22 retained some experts in this case, some 23 scientists --</p>

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1 A. Yes, sir.	1 marked as Exhibit 5 to your deposition; have
2 Q. -- to evaluate the site?	2 you seen those before?
3 A. Yes, sir.	3 A. (Reviewing documents.) No, sir.
4 Q. Have you worked with any of those	4 I haven't seen this first set, TestAmerica. I
5 experts?	5 haven't seen anything from TestAmerica, no,
6 A. No, sir.	6 sir.
7 Q. There is a company called -- well,	7 MR. BROCK: What I am trying to
8 it used to be called Amec. Did you work with	8 understand is I want to make sure that Drummond
9 any of those scientists?	9 is stipulating that these are the lab results
10 A. It is called what?	10 that were generated from our investigation in
11 Q. Amec, A-m-e-c or --	11 this case and doesn't dispute that these are
12 MR. DAVIS: Amec Foster Wheeler;	12 the lab results that were provided by
13 it is now Wood.	13 consultant Amec Foster Wheeler?
14 A. Oh, I am familiar with that name,	14 MR. DAVIS: How about this, the
15 but, no, I did not do any work with them, have	15 witness is not going to be able to do that,
16 not consulted with them or anything.	16 but -- and I don't know that I am prepared to
17 Q. (BY MR. BROCK:) There is another	17 do it now, but, not to be alarming, I don't see
18 gentleman named Lynn Sisk who has done an	18 that as a point of contention, and I think the
19 expert report. Have you communicated at all	19 lawyers can get together and work out a set of
20 with him about this case?	20 stipulations that will cover things like that.
21 A. No, sir.	21 MR. BROCK: Okay. I mean, I just
22 Q. How about Tom Simpson?	22 -- you understand what I am asking? I just
23 A. No, sir.	23 want to make sure that there is no position
Page 62	Page 64
1 Q. Anybody at PELA?	1 that Drummond has that these results aren't
2 A. No, sir.	2 accurate or aren't what was taken on site in
3 Q. Are you aware that last summer, in	3 August.
4 August, that the parties went on site and did a	4 MR. DAVIS: I think that's
5 sampling program?	5 something we should work out in conjunction
6 A. Yes, sir.	6 perhaps with the expert depositions without
7 Q. Who told you about that?	7 asking Mr. Hicks to address it, but, yeah, I
8 A. The attorneys.	8 hear you.
9 Q. Did anybody other than the	9 Q. (BY MR. BROCK:) Okay. As
10 attorneys that worked for Drummond talk to you	10 Drummond's representative here today, though,
11 about it?	11 you are not aware of any reason that these
12 A. No, sir.	12 results are invalid?
13 Q. When we went out and did that	13 A. No, sir, I am not aware of any
14 sampling, the samples, it was a joint sampling	14 reason why they wouldn't be.
15 event, and we sent all of the samples to the	15 (Whereupon, a break was had from
16 same lab; are you aware of that?	16 10:52 a.m. until 11:04 a.m.)
17 A. No, sir.	17 (Plaintiff's Exhibit 6 was marked
18 Q. Are you familiar with TestAmerica?	18 for identification.)
19 A. I just know the name.	19 MR. BROCK: Just for housekeeping
20 (Plaintiff's Exhibit 5 was marked	20 purposes, I have marked this Exhibit 6. These
21 for identification.)	21 are tables that Amec Foster Wheeler prepared
22 Q. Mr. Hicks, I am going to show you	22 from the data that we have marked Exhibit 5.
23 three documents clipped together that I have	23 And I guess we can enter into the same sort of

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<p>1 stipulation, assuming that --</p> <p>2 MR. DAVIS: Stipulation to discuss</p> <p>3 stipulations?</p> <p>4 MR. BROCK: Uh-huh.</p> <p>5 MR. DAVIS: Yeah, we will.</p> <p>6 MR. BROCK: But if Drummond is</p> <p>7 somehow now objecting to the joint sampling</p> <p>8 data, we would like to know that.</p> <p>9 MR. DAVIS: Yeah, I'm not aware of</p> <p>10 any objection. My thought is that we can just</p> <p>11 -- that that is a housekeeping detail and we</p> <p>12 can take up in some programmatic fashion so we</p> <p>13 can put it in front of the Court.</p> <p>14 Q. (BY MR. BROCK:) Mr. Hicks, this</p> <p>15 is Exhibit 38 to Mr. Muncher's deposition; it</p> <p>16 is a report from PELA.</p> <p>17 A. Yes, sir.</p> <p>18 Q. What is the date on that down at</p> <p>19 the bottom, if you would?</p> <p>20 A. October the 5th, 1984.</p> <p>21 Q. Do you recall seeing this report</p> <p>22 before?</p> <p>23 A. No, sir. As a part of this</p>	<p>1 A. 477. Do you want me to look</p> <p>2 through all of this, Mr. Brock, or is there</p> <p>3 some particular place you want me to look at?</p> <p>4 Q. (BY MR. BROCK:) Well, my question</p> <p>5 is have you ever reviewed that sampling data</p> <p>6 before?</p> <p>7 A. No, sir, other than being aware of</p> <p>8 it just here in the last few days.</p> <p>9 Q. Do you have any reason as</p> <p>10 Drummond's representative here today to think</p> <p>11 that this data is not accurate?</p> <p>12 A. Being done by a reputable company,</p> <p>13 no, I would not see that there is any reason to</p> <p>14 not think that it is valid.</p> <p>15 Q. Are you familiar with surface</p> <p>16 water sampling?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And groundwater sampling with</p> <p>19 groundwater wells?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And as part of your job at</p> <p>22 Drummond over the years, have you looked at and</p> <p>23 interpreted data like that?</p>
Page 66	Page 68
<p>1 preparation was the first time that I have seen</p> <p>2 it.</p> <p>3 Q. Do you understand that Drummond</p> <p>4 has retained PELA as a consultant or expert in</p> <p>5 this case?</p> <p>6 A. That is my understanding, yes.</p> <p>7 Q. Would you say that PELA has a good</p> <p>8 reputation for its engineering work?</p> <p>9 A. As far as I know --</p> <p>10 MR. DAVIS: Object to the form.</p> <p>11 Go ahead.</p> <p>12 A. As far as I know, engineering,</p> <p>13 geology, yes. I have never heard anything to</p> <p>14 the contrary.</p> <p>15 Q. (BY MR. BROCK:) Okay. Within</p> <p>16 this Exhibit 38, I put a paper clip on some</p> <p>17 pages, and it has to do with water quality.</p> <p>18 And my question is what follows that are some</p> <p>19 tables with sampling data from the '80s. Feel</p> <p>20 free to look through that.</p> <p>21 A. (Reviewing document.)</p> <p>22 MR. DAVIS: Let me get this number</p> <p>23 off --</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Are you aware that there were some</p> <p>3 groundwater monitoring wells installed on the</p> <p>4 property in the '80s?</p> <p>5 A. From reading some of these</p> <p>6 reports, yes, sir.</p> <p>7 Q. Are any of those wells still</p> <p>8 usable or functional?</p> <p>9 A. Not that I am aware of. I haven't</p> <p>10 seen any signs of any of them, you know, still</p> <p>11 being in existence in my -- you know, having</p> <p>12 been out there on the site. And I do know</p> <p>13 personally that we haven't been carrying on any</p> <p>14 monitoring of any of those sites in all of</p> <p>15 these years since.</p> <p>16 Q. When was the last time that</p> <p>17 Drummond did any sampling other than last</p> <p>18 summer to the attorneys and the experts on the</p> <p>19 site?</p> <p>20 A. For the site that -- you know,</p> <p>21 that you have shown me on --</p> <p>22 Q. On Exhibit 7?</p> <p>23 A. Right. We haven't done any</p>

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<p>1 sampling or analyses on any of that. Any of 2 the sampling that we would have carried on 3 would have been, you know, for adjoining area, 4 you know, where there would have been NPDES 5 points.</p> <p>6 Q. All right. Were there NPDES 7 points anywhere in this area that is depicted 8 in page two of Exhibit 7?</p> <p>9 A. There was one point that I believe 10 was on the NPDES permit map, you know, that 11 would have been in this area here, I believe 12 (indicating).</p> <p>13 Q. And you pointed to the --</p> <p>14 A. It shows a basin on there, I 15 believe, along somewhere --</p> <p>16 Q. Right here (indicating)?</p> <p>17 A. Let's see. Yes, sir, I think that 18 that corresponds with -- is it Basin 23 or 24? 19 One or the other.</p> <p>20 Q. And for the record, you are 21 talking about where it says basin right next to 22 SW-2 on this figure?</p> <p>23 A. Yes, sir.</p>	<p>1 Q. Have you talked to him any about 2 the Maxine site?</p> <p>3 A. In general terms, yes.</p> <p>4 Q. Have you talked to him about it 5 since the lawsuit was filed?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know Robert Clifton?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Is he employed by Drummond?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What is his position?</p> <p>12 A. He is a geologist.</p> <p>13 Q. Do you know how long he has been 14 at Drummond, roughly?</p> <p>15 A. Ten years, in that range.</p> <p>16 Q. Have you been on the Maxine site 17 with Mr. Clifton?</p> <p>18 A. I have not.</p> <p>19 Q. Have you spoken to him since the 20 lawsuit was filed about the Maxine site?</p> <p>21 A. Yes.</p> <p>22 Q. What was that conversation about?</p> <p>23 A. Oh, it's just generalities about</p>
Page 70	Page 72
<p>1 Q. And the NPDES discharge outfall 2 was somewhere in that area?</p> <p>3 A. I believe that's correct. And it 4 would have -- from reading the commentary and 5 everything in some of this, it would have been 6 to catch drainage that might have been the 7 upper reaches of -- well, let's see -- they 8 show it as the west ditch. I want to say that 9 the drainage that would have been from the west 10 ditch area would probably have come to that 11 pond down there.</p> <p>12 Q. Okay. Mr. Muncher mentioned a 13 gentleman named Wade Keeton; do you know him?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Does he work at Drummond?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What does he do at Drummond?</p> <p>18 A. He is an engineer for Drummond.</p> <p>19 Q. How long has he been there?</p> <p>20 A. Oh, I'm not sure exactly when Wade 21 would have gone to work. He is younger than 22 me, but I would think that he probably came in 23 the early '80s.</p>	<p>1 the lawsuit having been filed and -- the rest 2 of our conversation would be about how good the 3 vegetation is doing on the site, how things 4 have healed as well as they have over the last 5 three or four decades.</p> <p>6 Q. That's what Mr. Clifton said?</p> <p>7 A. That would be primarily what our 8 conversations would be about. It would be -- 9 it would come down to there was general 10 agreement on that type of statement.</p> <p>11 Q. Okay. We established with Mr. 12 Muncher that Drummond took ownership of the 13 Maxine property that is the subject of this 14 case January 1, 1986; is that consistent with 15 your understanding?</p> <p>16 A. Yes, sir.</p> <p>17 Q. At that point in time, what was 18 your position at Drummond?</p> <p>19 A. I was Manager of Reclamation and 20 Environmental Control.</p> <p>21 Q. Did you go on the site in 1986?</p> <p>22 A. No, sir -- well, I went to the 23 Maxine Mine area, yes, but as far as having</p>

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<p>1 accessed any of this old area at that time, no.</p> <p>2 Q. And by old area, you are referring</p> <p>3 to Exhibit 7?</p> <p>4 A. Yes, sir. What would be shown,</p> <p>5 you know, largely in the shaded area there, you</p> <p>6 know, I call that -- the majority of that is</p> <p>7 what I would call pre-law area. And so, no, I</p> <p>8 never accessed any of that area.</p> <p>9 Q. When did you first go to that area</p> <p>10 with the pre-law waste pile?</p> <p>11 A. After I became aware that this --</p> <p>12 of this filing that y'all did.</p> <p>13 Q. So you never went to that area of</p> <p>14 the site before 2016?</p> <p>15 A. No. In the -- what I had</p> <p>16 mentioned earlier about contract work that we</p> <p>17 did, treatment work that would have been done</p> <p>18 in conjunction with Dr. Pettry, you know, that</p> <p>19 would have been somewhere up in this area, you</p> <p>20 know, of where we would have done, you know,</p> <p>21 the treatment work (indicating).</p> <p>22 Q. Let me stop you there. You are</p> <p>23 pointing to the northern portion of the waste</p>	<p>1 some of it would have been.</p> <p>2 Q. Was some of it terraced?</p> <p>3 A. Yes, I do remember seeing some of</p> <p>4 the terraces that's generally shown in this</p> <p>5 area, yes (indicating).</p> <p>6 Q. Now, you can see some of the</p> <p>7 terracing on this map, you are saying?</p> <p>8 A. Yes, sir.</p> <p>9 Q. You mentioned the addition of</p> <p>10 alkaline products; what precisely was that?</p> <p>11 A. It would be from what I call</p> <p>12 agricultural lime all the way to hydrated lime.</p> <p>13 And I think there was actually some quicklime,</p> <p>14 you know, that burned lime, you know, that was</p> <p>15 put on it. The quicklime and hydrated lime,</p> <p>16 you know, would just be -- it would be lime</p> <p>17 material that would be much more reactive, give</p> <p>18 you a quick boost in alkalinity.</p> <p>19 Q. How do you apply it?</p> <p>20 A. Most of the time it's applied with</p> <p>21 a spreader truck or a tag-along spreader, you</p> <p>22 know, behind a farm tractor or could be behind</p> <p>23 a dozer. And what we applied it with a lime</p>
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<p>1 pile?</p> <p>2 A. Yes, it would be to the north of</p> <p>3 what's considered the north ditch.</p> <p>4 Q. And what work did you all do in</p> <p>5 that section of the waste pile?</p> <p>6 A. That was where ABC was grading</p> <p>7 some of the coarse refuse in the area. They</p> <p>8 were looking at capping, you know, some of the</p> <p>9 area. And Dr. Pettry had recommended that</p> <p>10 there be an extensive alkaline material</p> <p>11 addition to the site, you know, both before</p> <p>12 soil material would be put down and then after</p> <p>13 soil material would be replaced. And it would</p> <p>14 be to reduce or eliminate the potential of</p> <p>15 acidic runoff from the site.</p> <p>16 Q. Is that area that we are talking</p> <p>17 about now north of this capped area, was it</p> <p>18 ever capped?</p> <p>19 A. Yes, there was some area that was</p> <p>20 capped in this area (indicating).</p> <p>21 Q. With clay?</p> <p>22 A. Well, with soil or I would think</p> <p>23 non -- non-refuse, you know, material. Yes,</p>	<p>1 truck and so --</p> <p>2 Q. Was it Drummond employees that did</p> <p>3 that work?</p> <p>4 A. Yes, sir. It would have been</p> <p>5 people that work for me, yes, sir.</p> <p>6 Q. And this -- again, this was after</p> <p>7 Drummond had taken ownership of the property?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay.</p> <p>10 A. No, this would have been prior to</p> <p>11 Drummond, you know, having purchased ABC. It</p> <p>12 would have been not long before, you know, we</p> <p>13 purchased, but it would probably have been in</p> <p>14 late '84 or early '85, in that range. They</p> <p>15 were actively involved in doing, you know, the</p> <p>16 post-mine reclamation of the site, because, you</p> <p>17 know, all mining ceased down there in 1983.</p> <p>18 And so all the mine sites were going through</p> <p>19 demolition, but the mine was closed. And so</p> <p>20 they embarked on demolition and reclamation,</p> <p>21 you know, of the site, you know, after that.</p> <p>22 Q. After Drummond took possession in</p> <p>23 '86, was there any of that type work that you</p>

<p style="text-align: right;">Page 77</p> <p>1 are describing done in this area, in the mine 2 waste pile?</p> <p>3 A. No, not that I was involved in. I 4 mentioned earlier, you know, that there was an 5 underground mining division that was still had 6 been basically along the lines of what ABC had. 7 And so they would have continued to do 8 reclamation work not only -- if there was any 9 remaining work to be done here, ABC personnel 10 would have done this along with what was the 11 active mine sites, you know, that ABC or 12 Drummond had, you know, after January of '86.</p> <p>13 Q. Was there somebody at Drummond 14 that was assigned the task of surveying or 15 assessing this site after they took possession 16 of it?</p> <p>17 A. No. It would have -- all of that 18 would have been done, you know, by the 19 underground mining division. They still 20 maintained, you know, their own engineering 21 staff, their environmental staff. You know, 22 all of that was maintained intact. And that 23 would -- it would have stayed like that up</p>	<p style="text-align: right;">Page 79</p> <p>1 to retire. Most of them were older folks, and 2 so they started retiring, or I think couple of 3 them actually probably went to work elsewhere. 4 But, you know, the underground part, you know, 5 was -- a lot of it was being phased out and so, 6 you know, we started assuming more of the 7 reclamation work. When I say we, you know, the 8 people that would have been originally Drummond 9 employees.</p> <p>10 Q. Okay. What maintenance work has 11 Drummond performed on the site from when it 12 took possession in '86 through 2006 when this 13 case was filed, thirty-year period?</p> <p>14 A. Well, on all of this pre-law area, 15 nothing. There was nothing that was required, 16 you know, regulatorily. And the post-law, I 17 think we got final bond releases on the 18 post-law areas in 1992. So as it relates to 19 this general area, nothing would have been 20 required, you know, after that.</p> <p>21 Q. We will get to some of that in a 22 minute.</p> <p>23 A. Okay.</p>
<p style="text-align: right;">Page 78</p> <p>1 until roughly -- I'm going to say in rough 2 terms probably 1990.</p> <p>3 Q. And then what happened?</p> <p>4 A. And then Drummond would have 5 become more involved in final reclamation or 6 any remaining reclamation, you know, that would 7 be necessary on these sites. And that's -- 8 somewhere in that time range is whenever I 9 would have become more involved, you know, in 10 Maxine as it would relate to taking care of any 11 work on the post-mine area that would lead 12 toward getting final bond releases from ASMC 13 and getting monitoring releases from ADEM.</p> <p>14 Q. Why did Drummond become more 15 active in 1990?</p> <p>16 A. The underground mines, they were 17 -- they were closing. You know, they were 18 running out of reserves, so more of the 19 underground mines were being closed and 20 reclaimed, and so we got involved in a lot of 21 that work. And most of the people that would 22 have been associated with ABC doing engineering 23 reclamation work, you know, they were starting</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Who told you that there was no 2 regulatory requirement after reclamation?</p> <p>3 A. Be more specific, if you would.</p> <p>4 Q. Well, I think that's what you said 5 in your answer. You said nothing was done to 6 the pre-law area because there was no 7 regulatory requirement to do so. Who told you 8 that?</p> <p>9 A. There was -- jeez. I don't know 10 that anybody told me, I just knew. You know, 11 there were no permits for this site. The only 12 thing -- if there were regulatory requirements, 13 the only thing time-wise, you know, would have 14 been maybe under MSHA since that Health and 15 Safety Act went into effect in 1969. You know, 16 after that, you know, you would have to have 17 approvals for slurry pond areas and coarse 18 refuse areas, you would have to have approvals 19 from MSHA.</p> <p>20 Q. Would you consider the Clean Water 21 Act a regulatory requirement?</p> <p>22 MR. DAVIS: Object to the form and 23 foundation. Go ahead. You can answer.</p>

Dwight Hicks**21 (81 - 84)**

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1 A. After the Alabama Water 2 Improvement Commission gained primacy of Clean 3 Water Act activities here in Alabama, yes, that 4 would be a regulatory requirement, yes. 5 Q. (BY MR. BROCK:) When did that 6 happen? 7 A. I think in '74. 8 Q. Okay. After Drummond took 9 possession of this property in '86, did you 10 ever have any discussion with anybody about 11 whether the Clean Water Act required any sort 12 of work or maintenance or cleanup of this site? 13 A. No. 14 Q. Had you ever heard that before 15 this lawsuit was filed? 16 A. No. 17 Q. All right. In Plaintiff's Exhibit 18 7, page one to Muncher's deposition, have you 19 reviewed this when you looked at the exhibits? 20 A. Yes, sir. 21 Q. Okay. That is his handwriting in 22 red where he has identified the pre-law area? 23 A. Yes, sir.	1 Q. Has Drummond ever made any 2 calculation of that, to your knowledge? 3 A. No, sir, I don't believe so. 4 Q. Do you know -- next to it there, 5 the other area that Mr. Muncher circled is I 6 guess what is referred to on this area as the 7 post-law area; do you see that part? 8 A. Yes, sir, ties to this 9 (indicating). 10 Q. Right. Page two shows that area 11 in sort of a pinkish color, right? 12 A. Yes, sir. 13 Q. Do you know what the size and 14 acreage is of that post-law area? 15 A. No, sir. 16 Q. Do you know what the volume of 17 material there is? 18 A. No, sir. 19 Q. Is the material in the post-law 20 area different from what is in the pre-law 21 area? 22 A. You are talking about the coarse 23 refuse?
Page 82	Page 84
1 Q. Do you agree with what he has 2 designated there as pre-law? 3 MR. DAVIS: Let me ask you this, 4 Barry, just so the record is clear -- never 5 mind, I see where it is labeled. There are two 6 red areas. Excuse me. You see where that is? 7 A. Yes, sir. I think that is largely 8 true. 9 Q. (BY MR. BROCK:) Do you know what 10 the acreage is of that pre-law area? 11 A. The only thing that I would -- 12 just from reading some of the information, you 13 know, that's in the stack, I remember there 14 being one acreage figure for pre-law area, I 15 think it was thrown out there. Thirty-nine 16 acres is the figure that I remember, but that 17 would be the -- that would be the only thing 18 that I have seen, you know, that would tie it 19 to acreage in any way. 20 Q. Do you know what the volume of 21 material was that was placed on that pre-law 22 waste pile? 23 A. No, sir, I don't.	1 Q. Yes. 2 A. Well, it all came from the same 3 mine. So other than -- I would say the age of 4 it, you know, I would think that it would be 5 similar. 6 Q. You use the term coarse refuse? 7 A. Yes. 8 Q. Is that the same as geologic 9 overburden? 10 A. Yes, sir. In this case, yes, I 11 would say that's -- yes. 12 Q. Is washer waste something 13 different than geologic overburden or the same 14 thing? 15 A. I would say in this context, it 16 would be the same. 17 Q. Would it have the same general 18 chemical properties and characteristics? 19 A. I would say yes. I mean, you have 20 coarse refuse and you have fine refuse. And 21 fine refuse, you know, that is going to be what 22 goes into -- typically would go into a slurry 23 impoundment. And there was a slurry

Dwight Hicks**22 (85 - 88)**

<p style="text-align: right;">Page 85</p> <p>1 impoundment that was at Maxine that would be 2 off of this site.</p> <p>3 Q. Right. Is that the same thing as 4 a tailings pond?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. So your testimony is that 7 coarse refuse or material in these two areas of 8 the waste pile are basically the same stuff?</p> <p>9 MR. DAVIS: Object to the form and 10 foundation. You can answer.</p> <p>11 Q. (BY MR. BROCK:) Is that accurate?</p> <p>12 MR. DAVIS: You can answer.</p> <p>13 A. Yes, this coarse refuse, one is 14 going to be, you know, basically with no cover 15 material and the other is going to be with some 16 cover material. But the coarse refuse that 17 would be underneath this I would think would be 18 similar in nature to this, you know, whenever 19 it would have been placed there.</p> <p>20 Q. (BY MR. BROCK:) Does that 21 material have the potential to generate acid 22 mine drainage?</p> <p>23 MR. DAVIS: Object to the form and</p>	<p style="text-align: right;">Page 87</p> <p>1 about actual acid mine water drainage on the 2 site.</p> <p>3 A. Well, I see those being basically 4 the same, so --</p> <p>5 Q. Yeah.</p> <p>6 A. So you are asking does this have 7 the potential for AMD?</p> <p>8 Q. I asked that earlier, but now I'm 9 asking did it actually generate AMD on the 10 Maxine site.</p> <p>11 A. Based on what I have read, yes.</p> <p>12 Q. How do you define acid mine 13 drainage?</p> <p>14 A. To be simple about it, you know, 15 if it has got a -- if it has a -- you look at 16 it on the acid base level, and if you have 17 potential acidity that is higher than the 18 potential alkalinity by more than five tons per 19 thousand tons, well, then it's going to be 20 acidic and would have the potential then of 21 forming acid mine drainage.</p> <p>22 So it is going to be -- basically 23 material pH-wise would be -- have to be less</p>
<p style="text-align: right;">Page 86</p> <p>1 foundation.</p> <p>2 A. Potentially.</p> <p>3 Q. (BY MR. BROCK:) If it is exposed 4 to water and oxygen, can it generate acid mine 5 drainage?</p> <p>6 A. Potentially. But, you know, that 7 all depends on the characteristics of the coal, 8 the innerburden, you know, material that is 9 placed here. You can go all the way from it 10 could be potentially acid-forming all the way 11 up to being alkaline, so it's all site- 12 specific.</p> <p>13 Q. Specific to this site, were there 14 problems with acid mine drainage generation 15 going back to the 1970s?</p> <p>16 MR. DAVIS: Object to the form. 17 You can answer.</p> <p>18 A. Just from my reading of the 19 material, yes. I saw signs, you know, that 20 there was -- there was potential acidity on 21 some of these old sites.</p> <p>22 Q. (BY MR. BROCK:) And I am not 23 asking about potential acidity; I am talking</p>	<p style="text-align: right;">Page 88</p> <p>1 than six. And normally you are not going to 2 have any problems unless the pH is much lower 3 than six.</p> <p>4 Q. How much lower?</p> <p>5 A. Two pH units.</p> <p>6 Q. What about three?</p> <p>7 A. If it's three, well, then you 8 would have the potential for acid mine 9 drainage, yes, most places.</p> <p>10 Q. Does acid mine drainage have any 11 other chemical properties or typical 12 characteristics?</p> <p>13 A. It varies site-specifically, but, 14 yes, it could.</p> <p>15 Q. Like heavy concentrations of 16 metals, for example?</p> <p>17 A. It could, yes, sir.</p> <p>18 Q. And did the acid mine drainage on 19 the Maxine site have metal concentrations?</p> <p>20 A. Based on what I have seen in the 21 literature, yes, I've seen some signs of some of 22 the test results that -- yes.</p> <p>23 Q. Why was part of the waste pile</p>

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<p>1 capped and part of it wasn't?</p> <p>2 A. It would all have been based on</p> <p>3 age of the material as to whether it would be</p> <p>4 pre-law or post-law --</p> <p>5 Q. What is the dividing year about</p> <p>6 when it's pre-law or post-law?</p> <p>7 A. Well, the way I look at it, the</p> <p>8 law that you would be talking about is going to</p> <p>9 be the Surface Mining Control and Reclamation</p> <p>10 Act that would have been passed in 1977 and</p> <p>11 went into effect in -- I think it was in May of</p> <p>12 '78 with the interim program. It would have</p> <p>13 been administered kind of jointly here in</p> <p>14 Alabama by the Office of Surface Mining and</p> <p>15 what was at the time was the ASMRC. And then</p> <p>16 from surface mining, you know, when Alabama got</p> <p>17 primacy, you know, of the program which would</p> <p>18 have been State Act 41 -- let's see, it was</p> <p>19 81-435, which for surface mining would have</p> <p>20 been in -- would have been '81, and then for</p> <p>21 the surface effects of underground mining I</p> <p>22 think would have been in late '82, '83 when</p> <p>23 underground coal mines, you know, started</p>	<p>1 A. I am not sure that I follow you on</p> <p>2 that.</p> <p>3 Q. Is there any reason that had to do</p> <p>4 with something -- the topography or the water</p> <p>5 chemistry as opposed to the law that dictated</p> <p>6 covering part of the pile and not covering part</p> <p>7 of it?</p> <p>8 A. I would think that it would be</p> <p>9 more because of the regulatory program, yes.</p> <p>10 Q. Let me ask you to take a look at</p> <p>11 that real quick; have you seen that?</p> <p>12 A. Just in the literature.</p> <p>13 Q. Okay. This is a diagram that a</p> <p>14 consultant hired by Riverkeeper called</p> <p>15 Aquilogic put together which is their depiction</p> <p>16 of the site. And if you will see out to the</p> <p>17 side they have some time frames for the</p> <p>18 different areas of the GOB pile; do you see</p> <p>19 those?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And the area that we have been</p> <p>22 referring to as the pre-law area, they indicate</p> <p>23 that it was placed there between 1956 and 1974;</p>
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<p>1 getting permits from the Alabama Surface Mining</p> <p>2 Commission. So it would be that law is what</p> <p>3 would be the dividing line between pre-law and</p> <p>4 post-law.</p> <p>5 Q. Okay. So when we talk about</p> <p>6 pre-law and post-law, we are talking about</p> <p>7 SMCRA? Are you familiar with that</p> <p>8 abbreviation --</p> <p>9 A. Yes, that's the Surface Mining</p> <p>10 Control and Reclamation Act that was passed on</p> <p>11 the federal level.</p> <p>12 Q. S-M-C-R-A?</p> <p>13 A. Yes, uh-huh. Yes, sir.</p> <p>14 Q. Okay. So does that mean that the</p> <p>15 material that was covered was placed after</p> <p>16 1978, is that the idea?</p> <p>17 A. Yes. In general terms, I would</p> <p>18 say that would be true, yes, sir.</p> <p>19 Q. Okay. And have you told me, as</p> <p>20 best you understand it, the basis of why some</p> <p>21 of the material was covered and some wasn't?</p> <p>22 A. I think that was the main reason.</p> <p>23 Q. Is there any scientific reason?</p>	<p>1 do you know if that is accurate?</p> <p>2 A. I would think that's generally --</p> <p>3 MR. DAVIS: Do you know?</p> <p>4 A. Do I know? Just based on the</p> <p>5 literature that I have read, I would say that's</p> <p>6 generally true.</p> <p>7 Q. (BY MR. BROCK:) In other words,</p> <p>8 you don't have any reason to dispute that?</p> <p>9 A. No.</p> <p>10 Q. And the other area where they show</p> <p>11 that was placed between 1975 and 1977; do you</p> <p>12 see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And I believe that would</p> <p>15 correspond to the area we looked at earlier on</p> <p>16 Exhibit 7, page two, that is north of the</p> <p>17 capped pile, is that correct?</p> <p>18 A. Well, it looks like what you are</p> <p>19 showing -- it has got two different colors</p> <p>20 here, so looks like seventy-five to</p> <p>21 seventy-seven is running more along this</p> <p>22 eastern side that is north of the north ditch.</p> <p>23 Q. Do you know if that is accurate?</p>

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<p>1 A. No, I don't know.</p> <p>2 Q. Do you have any basis to dispute</p> <p>3 it?</p> <p>4 A. No.</p> <p>5 Q. And on the third area, it shows --</p> <p>6 they call it the infill GOB, 1978 to '82; same</p> <p>7 question, do you know if that is accurate?</p> <p>8 A. Well, that generally corresponds</p> <p>9 to the shaded area and --</p> <p>10 Q. The shaded area in Exhibit 7?</p> <p>11 A. Yes, sir. And those dates mirror</p> <p>12 generally, you know, the passage of the Surface</p> <p>13 Mining Act. So I could very easily see why</p> <p>14 this would be an area that would be</p> <p>15 seventy-eight to eighty-two, because there was</p> <p>16 cover material that -- soil material that was</p> <p>17 put over that.</p> <p>18 Q. Have you reviewed any records that</p> <p>19 would indicate when particular material was</p> <p>20 placed there?</p> <p>21 A. No, sir.</p> <p>22 Q. How did the material get</p> <p>23 transported to that area?</p>	<p>1 Q. Can you drive one?</p> <p>2 A. Yes. The difference between -- it</p> <p>3 would operate the same way as far as hauling</p> <p>4 refuse material like what a truck would. The</p> <p>5 big difference is that it is going to dump out</p> <p>6 of the bottom instead of it being dumped off</p> <p>7 the top and it has the capacity where you could</p> <p>8 actually self-load, you know, with a scraper,</p> <p>9 pull material up. Like you could take it off</p> <p>10 from a stockpile, take it somewhere else, and</p> <p>11 then dump it from the bottom, you know, like</p> <p>12 fill-in on a refuse pile.</p> <p>13 Q. Okay.</p> <p>14 A. You see a lot of underground</p> <p>15 mining companies that that is their primary</p> <p>16 means of hauling coarse refuse.</p> <p>17 Q. Do you know the area where this</p> <p>18 waste pile was created, the whole area, the</p> <p>19 post- and the pre-law, what was it like before</p> <p>20 mining started?</p> <p>21 A. I have no idea.</p> <p>22 Q. Do you know if it was de-forested?</p> <p>23 A. Normally --</p>
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<p>1 A. Most of the time material --</p> <p>2 coarse refuse would be hauled by -- well, it</p> <p>3 would be some type of conveyance equipment.</p> <p>4 Could be trucks, could be scrapers, could even</p> <p>5 be by belt conveyors.</p> <p>6 Q. Do you know how it was done at</p> <p>7 Maxine?</p> <p>8 A. Not specifically. I mean, you</p> <p>9 know, generally from seeing some of the old</p> <p>10 permit material, what's covered in the</p> <p>11 information, on one of the permit maps, you</p> <p>12 know, it shows conveyor. And so there might be</p> <p>13 a portion of it that could have been conveyed</p> <p>14 by belt, but then to get on out on this site, I</p> <p>15 would guess that it would either be by scraper</p> <p>16 or by truck.</p> <p>17 Q. When you say scraper, what does</p> <p>18 that mean? Like a front-end loader?</p> <p>19 A. No, no. It would be like a --</p> <p>20 well, a scraper. You don't know what a scraper</p> <p>21 is?</p> <p>22 Q. A piece of heavy equipment?</p> <p>23 A. Yes.</p>	<p>1 MR. DAVIS: Do you know?</p> <p>2 A. No.</p> <p>3 Q. (BY MR. BROCK:) Have you seen any</p> <p>4 like old aerial photographs of the area that</p> <p>5 might give you information about that?</p> <p>6 A. Yes. In some of the literature</p> <p>7 and all, yes, I have seen some old aerial</p> <p>8 photography, yes.</p> <p>9 Q. Do you know if it was forested</p> <p>10 then before it was converted to a mine waste</p> <p>11 pile?</p> <p>12 A. That whole countryside down there</p> <p>13 was forested, so, yes, I would say yes.</p> <p>14 Q. Do you know what prep work or any</p> <p>15 was done on the ground before the material was</p> <p>16 placed there?</p> <p>17 A. No, sir.</p> <p>18 Q. Do you know if anything was done?</p> <p>19 A. No, sir, I don't know.</p> <p>20 Q. Let me show you what we marked</p> <p>21 Exhibit 2 to Mr. Muncher's deposition. Can you</p> <p>22 tell us, for the record, what that is?</p> <p>23 A. It's the area -- the general area</p>

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<p>1 of the Maxine Mine.</p> <p>2 Q. Is it a permit map?</p> <p>3 A. Yes, sir. It says it is a permit</p> <p>4 map.</p> <p>5 Q. Are you familiar with looking at</p> <p>6 permit maps?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Have you looked at this one</p> <p>9 before?</p> <p>10 A. Yes, sir.</p> <p>11 Q. All right. In Mr. Muncher's</p> <p>12 testimony, we were trying to ascertain whether</p> <p>13 the mine waste area is within the permit</p> <p>14 boundaries on the mining permit, which I think</p> <p>15 is Number 3254. Do you know if it is or not?</p> <p>16 A. You are asking me if this general</p> <p>17 area is within the permit of this (indicating)?</p> <p>18 Q. Yes.</p> <p>19 A. No, it is not.</p> <p>20 Q. So is it accurate, then, that the</p> <p>21 mine dump area is not within the permit</p> <p>22 boundaries under the mining permit?</p> <p>23 MR. DAVIS: Object to the form.</p>	<p>1 minutes.</p> <p>2 (Whereupon, a break was had from</p> <p>3 11:45 a.m. until 11:52 a.m.)</p> <p>4 Q. (BY MR. BROCK:) I have a few</p> <p>5 questions for you about that diagram, the</p> <p>6 figure we have been looking at. So we talked</p> <p>7 earlier about the east ditch?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What area of the waste pile does</p> <p>10 that ditch drain?</p> <p>11 A. Based on the way they are showing</p> <p>12 the drainage areas and everything, it appears</p> <p>13 that it primarily drains old refuse.</p> <p>14 Q. And would that be the area looking</p> <p>15 at the photo that is to the right of the east</p> <p>16 ditch?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What does the east ditch</p> <p>19 ultimately discharge into?</p> <p>20 A. It's -- again, based on the way</p> <p>21 the drainage control is shown here, it looks</p> <p>22 like that it all -- it drains ultimately down</p> <p>23 toward the Locust Fork.</p>
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<p>1 A. Appears that that is true.</p> <p>2 Q. (BY MR. BROCK:) Was it ever</p> <p>3 within the permit boundaries?</p> <p>4 A. I don't know.</p> <p>5 Q. Would Drummond have a</p> <p>6 responsibility to reclaim property that is not</p> <p>7 within the mining permit boundaries?</p> <p>8 A. Based on the date of this permit,</p> <p>9 this is -- this is all -- this was from the</p> <p>10 original permit that would have been lodged</p> <p>11 with the Alabama Surface Mining Commission.</p> <p>12 Q. Right.</p> <p>13 A. And so what is being depicted</p> <p>14 here --</p> <p>15 Q. In Exhibit 7.</p> <p>16 A. Right. -- which is primarily</p> <p>17 pre-law area is not shown on this permit map.</p> <p>18 Q. Do you know if the permit was ever</p> <p>19 amended in any way to add the area shown in</p> <p>20 Exhibit 7?</p> <p>21 A. Not that I am aware of, no, sir,</p> <p>22 it was not.</p> <p>23 MR. BROCK: I need to take two</p>	<p>1 MR. DAVIS: The record is clear</p> <p>2 that we are looking at Drummond 2817?</p> <p>3 MR. BROCK: Right.</p> <p>4 MR. DAVIS: Okay.</p> <p>5 Q. (BY MR. BROCK:) Do you know who</p> <p>6 constructed the east ditch?</p> <p>7 A. Just based on a review of all of</p> <p>8 the documents that I have seen, I would say</p> <p>9 that Alabama By-Products personnel and/or</p> <p>10 contractors that would have been hired by ABC</p> <p>11 would have constructed the east ditch.</p> <p>12 Q. Have you seen any engineering</p> <p>13 design documents for it?</p> <p>14 A. No, sir, I have not.</p> <p>15 Q. Do you know what its dimensions</p> <p>16 were when it was constructed?</p> <p>17 A. No, sir, I have no idea.</p> <p>18 Q. All right. You see the north</p> <p>19 ditch on that same page?</p> <p>20 A. Yes, sir.</p> <p>21 Q. What areas of the waste pile does</p> <p>22 it drain?</p> <p>23 A. It would be the area north of what</p>

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<p>1 would be considered the soiled area or the --</p> <p>2 what was -- where there was clay material</p> <p>3 placed on it and where there are drainage</p> <p>4 control contour ditches, you know, that</p> <p>5 actually show on the photograph.</p> <p>6 Q. So the area north of the capped --</p> <p>7 A. Yes.</p> <p>8 Q. -- post-law material?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And where did it channel that</p> <p>11 runoff water to and ultimately discharge?</p> <p>12 A. Based on what it is showing in the</p> <p>13 way of drainage control, it would take the</p> <p>14 drainage that would be adjacent to the east</p> <p>15 ditch line and take it west and tie it in to</p> <p>16 the west ditch.</p> <p>17 Q. So the north ditch discharges into</p> <p>18 the west ditch?</p> <p>19 A. That's -- that's what it appears</p> <p>20 to, yes, sir.</p> <p>21 Q. Have you made any effort to</p> <p>22 confirm any of that yourself visually?</p> <p>23 A. I have actually walked over these</p>	<p>1 basin?</p> <p>2 A. That would have -- it would have</p> <p>3 been a collection basin for what would</p> <p>4 primarily be post-law area, and it would have</p> <p>5 also served if there was any sediment or</p> <p>6 anything that was going to be in any of that</p> <p>7 drainage, well, then it would be what we call a</p> <p>8 sediment pond.</p> <p>9 Q. Is it still there on the site now?</p> <p>10 A. Yes, sir. You can see there is</p> <p>11 still a pond that is in that area, yes, sir.</p> <p>12 Q. This figure also shows a</p> <p>13 cross-over; do you see that area?</p> <p>14 A. Yes, sir.</p> <p>15 Q. What was the purpose or function</p> <p>16 of that?</p> <p>17 A. It was -- based on looking at the</p> <p>18 literature and then seeing -- I have actually,</p> <p>19 you know, been to that cross-over area that is</p> <p>20 described, and it was to separate pre-law and</p> <p>21 post-mine drainage. You actually had it where</p> <p>22 they needed to cross over but they wanted to</p> <p>23 keep it separated. You didn't want pre-law</p>
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<p>1 sites. And it appears, even though a lot of</p> <p>2 this is not -- it's not intact now and it is so</p> <p>3 overgrown with trees and everything, it is hard</p> <p>4 to see some of this, but generally I would say</p> <p>5 that that was -- that was the configuration</p> <p>6 that was put in place, yes.</p> <p>7 Q. If you go on the site now and walk</p> <p>8 it, can you locate whatever is there now of the</p> <p>9 north ditch?</p> <p>10 A. You can see some of the remnants</p> <p>11 of it, yes, sir.</p> <p>12 Q. The same question with regard to</p> <p>13 the west ditch?</p> <p>14 A. Yes, sir, you can still see some</p> <p>15 of the -- you know, where it would have been,</p> <p>16 yes, sir.</p> <p>17 Q. What did the west ditch drain into</p> <p>18 -- or discharge into, rather?</p> <p>19 A. It appears that it comes down and</p> <p>20 ties in to -- or it drains into this basin that</p> <p>21 we talked about earlier that would be adjacent</p> <p>22 to that SW-2 site.</p> <p>23 Q. What was the purpose of that</p>	<p>1 stuff mixing with post-law stuff.</p> <p>2 Q. Have you seen sampled results from</p> <p>3 the pre-law versus the post-law runoff from the</p> <p>4 waste pile?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you know if there were</p> <p>7 differences in the two water streams?</p> <p>8 A. At the time that this was done?</p> <p>9 Q. Yes.</p> <p>10 A. I don't -- I don't know that for</p> <p>11 sure, but I would think that there is -- yes,</p> <p>12 that would have been the reason they would have</p> <p>13 designed it that way, because it was expected</p> <p>14 that there would be a difference.</p> <p>15 Q. Was there a discharge permit that</p> <p>16 was connected with the west ditch?</p> <p>17 A. This basin down here is on the</p> <p>18 NPDES permit that is in the file. There is a</p> <p>19 basin number that's tied to that, yes, sir.</p> <p>20 Q. Was there a permitted outfall in</p> <p>21 that area?</p> <p>22 A. Yes, sir, that's what I am talking</p> <p>23 about.</p>

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<p>1 Q. What does an outfall mean?</p> <p>2 A. It's -- it is a -- an NPDES</p> <p>3 discharge outfall is -- it can be -- you know,</p> <p>4 it is where a company is going to monitor water</p> <p>5 that is going to come off from your mine site,</p> <p>6 and it is where it is designated as the outfall</p> <p>7 point. That is where you are going to go, you</p> <p>8 know, for -- if you have requirements to</p> <p>9 monitor, well, then typically, you know, twice</p> <p>10 a month you are going to be going -- you are</p> <p>11 going to monitor at that same point. So that</p> <p>12 could be from a discharge of a pond, it could</p> <p>13 be -- you know, I have seen it where it could</p> <p>14 be from a discharge of a -- some kind of</p> <p>15 structure.</p> <p>16 Q. Okay. Have you looked at the</p> <p>17 discharge permit that was in effect after</p> <p>18 Drummond took possession of the property?</p> <p>19 A. I have seen -- there is a permit</p> <p>20 map, you know, that is in -- that is in the</p> <p>21 material that I have seen.</p> <p>22 Q. Mr. Davis is looking at the permit</p> <p>23 now, and that was Exhibit 33 to Mr. Muncher's</p>	<p>1 and that each one corresponds to the number in</p> <p>2 order; is that the way you read it?</p> <p>3 A. It doesn't say that, but, yes,</p> <p>4 that's the logical -- logical thing.</p> <p>5 Q. So by that logic for Outfall 24,</p> <p>6 it says the receiving water is an unnamed</p> <p>7 tributary of the Locust Fork; do you see that?</p> <p>8 A. Yes, sir, that's what it shows.</p> <p>9 Q. All right. Was there an unnamed</p> <p>10 tributary that ran through the site in that</p> <p>11 area?</p> <p>12 A. I have never seen a tributary that</p> <p>13 runs through that site, no.</p> <p>14 Q. Why did the permit describe it,</p> <p>15 then, as a tributary?</p> <p>16 A. That is a general term that is</p> <p>17 used by ADEM to describe any waters that flow</p> <p>18 downstream or goes down gradient, you know,</p> <p>19 that comes to a outfall point. And it is going</p> <p>20 to be -- in this case, before it gets to the</p> <p>21 Locust Fork, you know, any drainage coming</p> <p>22 downstream which shows that, they are going to</p> <p>23 call it -- that's their vernacular for -- just</p>
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<p>1 deposition. Have you looked at the permit</p> <p>2 yourself?</p> <p>3 A. Yes, I have -- yes, I have</p> <p>4 generally looked at this, yes, sir.</p> <p>5 Q. Okay. While you have it in front</p> <p>6 of you, do you know what the number was of the</p> <p>7 outfall that is in this area that we are</p> <p>8 looking at on Exhibit 7, the basin?</p> <p>9 A. The map is not with this, but from</p> <p>10 my recollection of it, I think that it is</p> <p>11 Outfall 24.</p> <p>12 Q. All right. And what were the</p> <p>13 receiving waters for Outfall 24?</p> <p>14 A. The way it was -- the way --</p> <p>15 Q. I'm referring to the first page of</p> <p>16 the permit.</p> <p>17 A. Yes, sir. It has got receiving</p> <p>18 waters of -- it has Coal Creek, Locust Fork,</p> <p>19 unnamed tributary of Prescott, unnamed</p> <p>20 tributary of Locust Fork of the Black Warrior</p> <p>21 River.</p> <p>22 Q. It looks to me like there are four</p> <p>23 outfalls and four described receiving waters</p>	<p>1 to designate downstream flow.</p> <p>2 Q. Have you seen a USGS map that</p> <p>3 showed a tributary there, an intermittent</p> <p>4 stream?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you know if that is true or</p> <p>7 not, that it is shown on old USGS maps as an</p> <p>8 intermittent tributary?</p> <p>9 A. No, sir.</p> <p>10 Q. You didn't know one way or the</p> <p>11 other?</p> <p>12 A. No.</p> <p>13 Q. Do you know if the tributary was</p> <p>14 ever altered, its course, to go around sediment</p> <p>15 basins on the site?</p> <p>16 A. No, sir, I don't know that.</p> <p>17 Q. Has anyone ever told you that?</p> <p>18 A. No, sir.</p> <p>19 Q. So you are not saying it wasn't,</p> <p>20 you are just saying you don't know one way or</p> <p>21 the other?</p> <p>22 A. Right, I do not know.</p> <p>23 Q. Do you know if the tributary was</p>

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<p>1 filled with mine waste?</p> <p>2 A. First, I don't see a tributary.</p> <p>3 But if you are talking about this drainage</p> <p>4 course here, based on some of the literature</p> <p>5 that is in here, it appears that there was a</p> <p>6 plan to put coarse refuse material in that</p> <p>7 drainage course.</p> <p>8 Q. Is a drainage course different</p> <p>9 than a tributary?</p> <p>10 A. Well, it is to me.</p> <p>11 Q. How so?</p> <p>12 A. It comes down to size. Tributary</p> <p>13 is -- you know, to me, normally is going to be</p> <p>14 something that is going to be larger. Drainage</p> <p>15 course is going to be smaller. You have got</p> <p>16 permanent, intermittent, ephemeral, you know,</p> <p>17 and then it goes all the way down to a drainage</p> <p>18 ditch.</p> <p>19 Q. So which is larger between a</p> <p>20 tributary and -- what was your term?</p> <p>21 A. A drainage course.</p> <p>22 Q. Which is larger?</p> <p>23 A. Typically a tributary would be --</p>	<p>1 A. No, sir.</p> <p>2 Q. All right. Take a look, if you</p> <p>3 would, to Exhibit 3 to Mr. Muncher's</p> <p>4 deposition; and we asked him if he could draw</p> <p>5 with a red pen the course of what we are</p> <p>6 talking about that I refer to as a tributary</p> <p>7 and you call a drainage course.</p> <p>8 A. Okay.</p> <p>9 Q. Do you agree with his depiction</p> <p>10 there of the path in which it runs?</p> <p>11 A. Well, he has basically drawn the</p> <p>12 red line that is going to be similar to quite a</p> <p>13 bit of what would be considered the west ditch.</p> <p>14 So you are asking --</p> <p>15 Q. We asked him to draw on that map</p> <p>16 where the tributary was.</p> <p>17 A. Where the tributary was. Well,</p> <p>18 then, there is -- there is no way to tell where</p> <p>19 the tributary was based on what is shown on</p> <p>20 this map.</p> <p>21 Q. Okay. Do you disagree with his</p> <p>22 depiction then or are you saying you can't --</p> <p>23 A. No, I am not disagreeing.</p>
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<p>1 you know, it would be larger. But like I said,</p> <p>2 they are just using that as a general term to</p> <p>3 say that you have got a drainage course that is</p> <p>4 running down through -- and drainage course</p> <p>5 could be all the way -- I mean, you know, the</p> <p>6 Locust Fork is a drainage course. You know,</p> <p>7 this coming down through here is a drainage</p> <p>8 course (indicating).</p> <p>9 Q. Was the tributary referred to in</p> <p>10 the permit a Water of the United States?</p> <p>11 MR. DAVIS: Object to the form and</p> <p>12 to the extent it calls for a legal conclusion.</p> <p>13 You can tell him what you understand.</p> <p>14 A. No.</p> <p>15 Q. (BY MR. BROCK:) You are saying it</p> <p>16 was not?</p> <p>17 A. In my estimation, no.</p> <p>18 Q. In your opinion, it was not? Is</p> <p>19 that what you are saying?</p> <p>20 A. That's correct.</p> <p>21 Q. Are you aware of any kind of</p> <p>22 jurisdictional determination that related to</p> <p>23 that tributary?</p>	<p>1 Q. -- comment on that one way or the</p> <p>2 other?</p> <p>3 You will notice that he drew the</p> <p>4 tributary running directly through the -- what</p> <p>5 we have called the post-law or capped GOB area,</p> <p>6 right?</p> <p>7 A. Right, it runs basically along the</p> <p>8 lines of the west ditch. And he brings it down</p> <p>9 and ties it in to that discharge point, that</p> <p>10 outfall point 24.</p> <p>11 Q. Right. And the way he has drawn</p> <p>12 that, it would be buried right now by mine</p> <p>13 waste, correct?</p> <p>14 MR. DAVIS: Object to the form.</p> <p>15 The document shows what it shows. You can</p> <p>16 answer if you --</p> <p>17 A. Yes, sir, I would say that's true.</p> <p>18 Q. (BY MR. BROCK:) Is that true, in</p> <p>19 fact?</p> <p>20 MR. DAVIS: Object to the form and</p> <p>21 foundation.</p> <p>22 Q. (BY MR. BROCK:) Whether you call</p> <p>23 it a tributary or the -- what is your term</p>

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<p>1 again? I'm sorry, I will get it.</p> <p>2 A. Coarse refuse.</p> <p>3 Q. No, no. Your term for the</p> <p>4 tributary.</p> <p>5 A. Oh, drainage course.</p> <p>6 Q. Okay. Whether we call it</p> <p>7 tributary or drainage course, would you agree</p> <p>8 with me now that it is covered in capped mine</p> <p>9 waste?</p> <p>10 MR. DAVIS: Same objection. You</p> <p>11 can answer if you know.</p> <p>12 A. Yes, sir. This would all -- this</p> <p>13 shows the area that would have -- you know,</p> <p>14 would have been -- based on information that is</p> <p>15 in all of that, you know, if we are -- a coarse</p> <p>16 refuse disposal site would be under MSHA.</p> <p>17 Q. (BY MR. BROCK:) Yes, sir. Going</p> <p>18 back to the document we have been looking at,</p> <p>19 Drummond 2817, there is one more ditch on there</p> <p>20 called the parallel ditch; do you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What did it drain -- or what was</p> <p>23 it designed to drain?</p>	<p>1 in that exhibit it shows two dams?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Are you familiar with those</p> <p>4 structures?</p> <p>5 A. I have been to those areas, yes.</p> <p>6 Q. Are those dams intact?</p> <p>7 A. Yes.</p> <p>8 Q. Both of them?</p> <p>9 A. Yes.</p> <p>10 Q. Is the lower dam down near the</p> <p>11 Locust Fork, which I will probably refer to as</p> <p>12 Dam Number 1 because it is referred to that way</p> <p>13 in some of the documents, when was it built?</p> <p>14 A. I don't know.</p> <p>15 Q. What about the one upstream of</p> <p>16 there which I am going to refer to as Dam</p> <p>17 Number 2 by SW-1?</p> <p>18 A. I do not know.</p> <p>19 Q. Do you have any ballpark idea when</p> <p>20 these dams were built?</p> <p>21 A. Well, you want me to guess?</p> <p>22 Q. No. Were they there the first</p> <p>23 time you went on the property?</p>
Page 114	Page 116
<p>1 A. Just based on what I am seeing</p> <p>2 here and your question, I cannot tell what that</p> <p>3 drains, what the parallel ditch drains.</p> <p>4 Q. When you have been on site walking</p> <p>5 around, have you seen any evidence of the</p> <p>6 existence of that ditch out there today?</p> <p>7 A. Well, you know, that ties in -- it</p> <p>8 appears that it ties in with the cross-over.</p> <p>9 So I am going to -- I am guessing --</p> <p>10 Q. Well, look, I don't want you to</p> <p>11 guess, and neither does Richard, but if you can</p> <p>12 interpret it based on your knowledge and your</p> <p>13 experience and your familiarity --</p> <p>14 A. I am not going to -- I am not</p> <p>15 going to interpret, then.</p> <p>16 Q. Okay. So your testimony is you</p> <p>17 can't tell and don't know --</p> <p>18 A. That's correct.</p> <p>19 Q. -- what the parallel ditch drains</p> <p>20 into?</p> <p>21 A. That is correct.</p> <p>22 Q. Looking back now at Drummond 152,</p> <p>23 which is the first page of Exhibit 7, you see</p>	<p>1 A. Yes, but the first time that I was</p> <p>2 in this area was just after this lawsuit, you</p> <p>3 know, was installed. And both of them were</p> <p>4 obviously in place and over here in the last</p> <p>5 two years.</p> <p>6 Q. Okay. What is the purpose of</p> <p>7 those two dams?</p> <p>8 A. I would say that they were</p> <p>9 sediment control structures.</p> <p>10 Q. How do they control sediment?</p> <p>11 A. Well, you -- if you build a dam</p> <p>12 across a drainage area within -- if there is</p> <p>13 water that is coming down through there and if</p> <p>14 there is any sediment, you know, that's in it</p> <p>15 within -- just with sediment hitting water, it</p> <p>16 is going to slow it down and you are going to</p> <p>17 have -- solids are going to precipitate, stay</p> <p>18 inside of the pond itself or the dam upstream</p> <p>19 from the dam.</p> <p>20 Q. Do you know if any permits were</p> <p>21 ever issued for those two dams?</p> <p>22 A. I have seen nothing in all of the</p> <p>23 information that has been put together that</p>

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<p>1 would indicate that there was any kind of --</p> <p>2 no, no regulatory -- there was no regulatory</p> <p>3 approvals of those dams that I can see.</p> <p>4 Q. Since the lawsuit was filed, has</p> <p>5 Drummond talked to the Corps of Engineers about</p> <p>6 those dams?</p> <p>7 A. No, not that I am aware of.</p> <p>8 Q. Do you know what the dams are</p> <p>9 constructed of?</p> <p>10 A. Well, obviously I was never there</p> <p>11 on site when construction was done on any of</p> <p>12 this, and so just from -- I have seen -- I have</p> <p>13 seen the dams as they are today. So other than</p> <p>14 just seeing what they look like today, as far</p> <p>15 as how they were constructed or what material</p> <p>16 originally, I can't tell you that.</p> <p>17 Q. Well, wouldn't the material be the</p> <p>18 same today as originally?</p> <p>19 A. Well, it's covered with</p> <p>20 vegetation. You know, both of them are covered</p> <p>21 with vegetation. You know, there is going to</p> <p>22 be organic matter that is on top of both of</p> <p>23 them, so just from observing them, you can't</p>	<p>1 Q. At the spillway on this Dam Number</p> <p>2 1 on the Maxine site, does it discharge surface</p> <p>3 water from the mine site to the Locust Fork?</p> <p>4 A. From what I have seen out there,</p> <p>5 yes.</p> <p>6 Q. Did Drummond ever have a permit to</p> <p>7 discharge from that outfall?</p> <p>8 A. No, sir.</p> <p>9 Q. Has it ever requested one?</p> <p>10 A. No, sir.</p> <p>11 Q. Since this lawsuit has been filed,</p> <p>12 has Drummond talked with ADEM about obtaining a</p> <p>13 discharge permit for this spillway outfall?</p> <p>14 A. Not that I am aware of.</p> <p>15 Q. Were you in a meeting with ADEM</p> <p>16 that Mr. Muncher described within the last</p> <p>17 month or so?</p> <p>18 A. No, sir.</p> <p>19 Q. Has Drummond had anybody make an</p> <p>20 assessment of the stability of these two dams?</p> <p>21 A. Not that I am aware of.</p> <p>22 Q. Have they asked you to look at</p> <p>23 them and assess that?</p>
Page 118	Page 120
<p>1 readily tell.</p> <p>2 Q. Does the lower dam have what is</p> <p>3 referred to as a limestone filter?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know what that is?</p> <p>6 A. Yes, sir.</p> <p>7 Q. But you don't know if that Dam</p> <p>8 Number 1 includes one?</p> <p>9 A. No, sir, I don't know.</p> <p>10 Q. Does Dam Number 1 have a spillway?</p> <p>11 A. Yes, along the -- if you are</p> <p>12 looking downstream, there is a spillway that</p> <p>13 would be along the left-hand side, the east</p> <p>14 side -- the northeast side.</p> <p>15 Q. What is the purpose of the</p> <p>16 spillway?</p> <p>17 A. Well, it would be as a pond fills</p> <p>18 up with water within, you know -- whenever it</p> <p>19 is going to be conveyed -- when the water is</p> <p>20 going to be conveyed on downstream, well, then</p> <p>21 if you have a spillway, that is going to be a</p> <p>22 slightly lower spot where the water is going to</p> <p>23 go out, go downstream.</p>	<p>1 A. No, sir.</p> <p>2 Q. Would you be qualified to do that?</p> <p>3 A. I'm not an engineer.</p> <p>4 Q. Okay. Looking again at that</p> <p>5 figure in front of you, the area that is above</p> <p>6 Dam Number 2 between SW-1 and MO-3 --</p> <p>7 A. Yes, sir.</p> <p>8 Q. -- would you call that area a</p> <p>9 sediment basin?</p> <p>10 A. The way that dam was put across</p> <p>11 there, yes.</p> <p>12 Q. And would the area downstream of</p> <p>13 that between the two dams be another sediment</p> <p>14 basin?</p> <p>15 A. Wait, now. Let me make sure.</p> <p>16 Q. Okay.</p> <p>17 A. When you said between SW-3 and</p> <p>18 MO-3, you are --</p> <p>19 Q. No, I said between SW-1 which is</p> <p>20 right next to the dam --</p> <p>21 A. I got you.</p> <p>22 Q. -- and MO-3. Those are just two</p> <p>23 sampling sites, but I am using them as a</p>

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<p>1 reference point.</p> <p>2 A. I got you. You are talking about 3 that dam that is shown on this Exhibit 7?</p> <p>4 Q. Right.</p> <p>5 A. The upstream dam.</p> <p>6 Q. Right.</p> <p>7 A. And so what is your question about 8 that?</p> <p>9 Q. My question is would the area 10 north of that between that dam and MO-3 be a 11 sediment basin?</p> <p>12 A. It appears that it would have been 13 put there, so, yes, if there was drainage 14 coming down through there, well, then it would 15 be a stop point, you know, to slow the water 16 down and to settle out any sediment, yes.</p> <p>17 Q. Okay. And then would the area 18 between the two dams also be a sediment basin?</p> <p>19 A. I would -- yes, I would say that 20 is correct.</p> <p>21 Q. And how would sediment go from the 22 area above the upper dam into the sediment 23 basin below the upper dam?</p>	<p>1 would be impounded by the lower dam, yes.</p> <p>2 Q. Okay. Thanks. Have you worked 3 with 404 permits --</p> <p>4 A. Yes, sir.</p> <p>5 Q. -- under the Clean Water Act? Do 6 you know what those are?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What is a 404 permit?</p> <p>9 A. It is a dredge and fill permit 10 that is required in -- if there is Corps of 11 Engineers jurisdiction.</p> <p>12 Q. When was that program enacted, if 13 you know?</p> <p>14 A. Jeez, I don't know.</p> <p>15 Q. Have you worked on obtaining 404 16 permits for Drummond on its mine sites?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Was there any 404 permit that was 19 issued for the Maxine site?</p> <p>20 A. There is -- as far as this site, 21 no. There was a construction -- as I remember, 22 there is something in the literature or in the 23 information, or it could be in the permit</p>
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<p>1 A. It would be -- it would be 2 conveyed -- you know, usually it is going to be 3 going through a spillway. Is that what you 4 are --</p> <p>5 Q. Does the upper dam have a 6 spillway?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. And so the same question 9 with surface water: Does surface water move 10 through a spillway from the upper dam into the 11 lower sediment basin?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So the purpose as I understand the 14 design of that system is to convey sediment and 15 surface runoff water in that direction, is that 16 correct?</p> <p>17 A. Well, this is all flowing down 18 slope. So if there is any water that is going 19 to obviously come during rainfall events, then 20 all of that is going to be conveyed down slope. 21 And so it would have to go through the area 22 that's above the second dam and through some 23 means of going into the area below it that</p>	<p>1 package somewhere, but there was a barge 2 loading site that would be upstream from here. 3 And so there was a Corps construction permit to 4 put in that barge loading site, but that is the 5 only thing I have ever seen that would relate 6 to the Corps in any way.</p> <p>7 Q. So Drummond did get one Corps 8 permit?</p> <p>9 A. Not Drummond. ABC.</p> <p>10 Q. Okay.</p> <p>11 A. Yes, sir.</p> <p>12 Q. Do you know what year that was?</p> <p>13 A. I don't know specifically, but 14 based on all of the information, I would say 15 that it was probably back sometime in the '70s.</p> <p>16 Q. Would a sediment basin if it is in 17 a jurisdictional water or a Water of the U.S. 18 require a 404 permit, in your experience?</p> <p>19 A. No.</p> <p>20 MR. DAVIS: Object to --</p> <p>21 Q. (BY MR. BROCK:) It would not? 22 Why not?</p> <p>23 MR. DAVIS: Object to the form,</p>

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<p>1 foundation, and to the extent it calls for a 2 legal conclusion. You can answer.</p> <p>3 A. Typically that's not a part of 4 their control mechanism. For coal mining 5 purposes, if you are going to have an outfall 6 point, you know, from the water quality 7 standpoint, then that is going to be either an 8 ASMC and/or an ADEM permit requirement. You 9 know, it doesn't typically have anything to do 10 with Corps of Engineers.</p> <p>11 Q. (BY MR. BROCK:) Let me make sure 12 you understood my question; maybe you did, but 13 I want to make sure.</p> <p>14 What I was asking is if you build 15 a sediment basin in a tributary, does it 16 require a 404 permit?</p> <p>17 MR. DAVIS: Same objections.</p> <p>18 A. Typically, no.</p> <p>19 Q. (BY MR. BROCK:) When you say 20 typically, does that mean that is your 21 experience with how that has been handled at 22 Drummond?</p> <p>23 MR. DAVIS: Object to the form and</p>	<p>1 shown in that photograph?</p> <p>2 A. It -- it appears -- from my having 3 been out there recently, it appears that it is 4 going to be the area above what you described 5 as Dam Number 1.</p> <p>6 Q. Okay. And in the case we have 7 referred to that as sediment basin number one 8 for your information.</p> <p>9 A. Okay.</p> <p>10 Q. What is that material that we see 11 on the ground there in that area?</p> <p>12 A. It's going to be a mixture of 13 soil, spoil, coarse refuse.</p> <p>14 Q. How did that material get there?</p> <p>15 A. It would have been conveyed down 16 slope from the drainage area.</p> <p>17 Q. What was the origin of that 18 material?</p> <p>19 A. Well --</p> <p>20 MR. DAVIS: Do you know?</p> <p>21 A. Sir?</p> <p>22 MR. DAVIS: Do you know? Don't 23 guess.</p>
Page 126	Page 128
<p>1 foundation.</p> <p>2 A. Yes.</p> <p>3 MR. BROCK: What time is it?</p> <p>4 MR KINNEY: 12:25.</p> <p>5 MR. BROCK: Let's go five more 6 minutes.</p> <p>7 Q. (BY MR. BROCK:) Okay. With 8 regard to the basins that we talked about on 9 that drawing, do you know what their capacity 10 is?</p> <p>11 A. You are calling basins -- you are 12 talking about the areas that's going to be 13 above these two dams?</p> <p>14 Q. Right.</p> <p>15 A. No, sir, I have no idea.</p> <p>16 (Plaintiff's Exhibit 7 was marked 17 for identification.)</p> <p>18 Q. Okay, Mr. Hicks, would you look at 19 what I am handing you that I marked Exhibit 7 20 to your deposition. This is a photograph that 21 was taken on May 24th, 2006 by the Riverkeeper.</p> <p>22 A. Okay.</p> <p>23 Q. Do you recognize the area that is</p>	<p>1 Q. (BY MR. BROCK:) I don't want you 2 to guess, but I also don't want to you act like 3 you don't have any knowledge or understanding 4 about these type things, and I think you 5 probably do. So let me ask a direct question. 6 Did that material come from the 7 pre-law mine refuse pile?</p> <p>8 A. Based on what I am seeing here, 9 yes, there would have been some of that 10 material that would have come from the pre-law 11 area.</p> <p>12 Q. Is that area basically filled with 13 mine waste, would you agree with that or 14 disagree?</p> <p>15 MR. DAVIS: Object to the form.</p> <p>16 You can answer.</p> <p>17 A. Generally I would say yes.</p> <p>18 Q. (BY MR. BROCK:) Since Drummond 19 has owned the property, has there been any 20 excavating or removing any of that material in 21 that area, Basin 1?</p> <p>22 A. No, there has not.</p> <p>23 Q. Does Drummond believe that that</p>

<p style="text-align: right;">Page 129</p> <p>1 material should be excavated or that anything 2 should be done with that area?</p> <p>3 MR. DAVIS: Object to the form.</p> <p>4 Q. (BY MR. BROCK:) I am asking you 5 in your own words as Drummond's representative 6 does Drummond believe anything should be done 7 to remediate that area?</p> <p>8 MR. DAVIS: The objection is 9 because you are asking him what he believes, 10 and he is here to testify about facts.</p> <p>11 Q. (BY MR. BROCK:) Okay. Can you 12 answer the question?</p> <p>13 A. I do not believe that anything 14 needs to be done there.</p> <p>15 Q. Do you believe the material should 16 just be left there?</p> <p>17 A. Absolutely.</p> <p>18 Q. Mr. Hicks, with regard to that 19 area shown in Exhibit 7, have you seen any 20 aerial photos or older photos that show that a 21 slough was once in that area before it was 22 dammed?</p> <p>23 A. I don't recollect seeing anything</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. Do you recognize that to be the 2 same area?</p> <p>3 MR. DAVIS: Exhibit 8.</p> <p>4 Q. (BY MR. BROCK:) Oh, I'm sorry, 5 Exhibit 8.</p> <p>6 A. Yes. That is going to basically 7 be just shown -- maybe this is slightly 8 upstream from what you are showing on Exhibit 7 9 or from a different angle.</p> <p>10 Q. Okay. For the record, Exhibit 8 11 is a photo that was taken on June 12th, 2017 12 when we went out and did a site visit. Do you 13 see evidence in that picture that surface water 14 is moving over the top of that mine waste?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you think that it is true that 17 surface water moves over the top of that mine 18 waste through the spillway and discharges to 19 the Locust Fork?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Do you know what type of permit, 22 if any, would be required to excavate or remove 23 this material?</p>
<p style="text-align: right;">Page 130</p> <p>1 like that, no, sir.</p> <p>2 Q. Do you refute that?</p> <p>3 A. I can't say.</p> <p>4 Q. You don't know one way or the 5 other?</p> <p>6 A. No, sir.</p> <p>7 Q. You don't know if that material we 8 see in Exhibit 7 is filling what was once a 9 slough?</p> <p>10 A. Well, it's --</p> <p>11 Q. No, I am talking about the 12 photograph.</p> <p>13 A. I understand, but I am referring 14 back to this (indicating). This is a drainage 15 course down through here. So whether you call 16 it a slough, a drainage course or whatever, you 17 know, this material is -- has filled in a 18 drainage course, yes.</p> <p>19 (Plaintiff's Exhibit 8 was marked 20 for identification.)</p> <p>21 Q. Take a look at what I have marked 22 Exhibit 7, if you would.</p> <p>23 A. Yes, sir.</p>	<p style="text-align: right;">Page 132</p> <p>1 A. No, sir.</p> <p>2 Q. Have you made any inquiry with any 3 regulators about that?</p> <p>4 A. No, sir.</p> <p>5 Q. Has anyone at Drummond, to your 6 knowledge?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. From 2006 to 2017, which is the 9 date of these two photos that we just looked 10 at --</p> <p>11 A. Yes, sir.</p> <p>12 Q. -- did Drummond do any sampling or 13 monitoring of surface water that was 14 discharging off the site through the lower dam?</p> <p>15 A. No, sir.</p> <p>16 Q. Was Drummond ever made aware of 17 any problems at the Maxine Mine site in 2006?</p> <p>18 A. Not that I am aware of.</p> <p>19 (Plaintiff's Exhibit 9 was marked 20 for identification.)</p> <p>21 Q. I am handing you what I have 22 marked Exhibit 9. This photo was taken on June 23 12th, 2017. Is that, again, a picture of the</p>

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<p>1 same area?</p> <p>2 A. It appears to be, yes, sir.</p> <p>3 Q. Does that area that we see appear 4 to you to be a trench or a gully in the mine 5 waste?</p> <p>6 A. I would just -- I wouldn't call 7 that a gully or a trench, either one. It's 8 just a water conveyance area.</p> <p>9 Q. Okay. Has Drummond calculated how 10 much material is in this lower basin area?</p> <p>11 A. Not that I am aware of, no, sir.</p> <p>12 Q. Has it costed out or gotten any 13 kind of estimate of what it would cost to 14 remove it?</p> <p>15 A. Not that I am aware of.</p> <p>16 (Plaintiff's Exhibit 10 was marked 17 for identification.)</p> <p>18 Q. One more photo, if you don't mind. 19 This picture was taken on August 1st, 2017. 20 Does that appear to be the same general area we 21 are looking at?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Does that appear to you that there</p>	<p>1 Q. (BY MR. BROCK:) Mr. Hicks, we are 2 back on the record after a lunch break, and I 3 have handed Mr. Davis Exhibit 5 to the Muncher 4 deposition. Can you identify that for the 5 record, please?</p> <p>6 A. Exhibit Number 5, it shows as a 7 storage tank location for NPDES permits at 8 Maxine.</p> <p>9 Q. Okay. And this looks like it was 10 prepared by Drummond Company? It has their 11 stamp on it.</p> <p>12 A. Yes. It would have been in 1988, 13 yes.</p> <p>14 Q. Do you know who prepared this map?</p> <p>15 A. Oh -- no, it doesn't -- it does 16 not note on here who prepared it, so it would 17 have been somebody that would have been in our 18 engineering section.</p> <p>19 Q. Okay. A question I want to ask 20 you about this is do you see where it says mine 21 dump?</p> <p>22 A. Mine dump --</p> <p>23 Q. (Indicating.)</p>
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<p>1 is visible water that is moving through that 2 conveyance over the mine waste --</p> <p>3 MR. DAVIS: Object to the form.</p> <p>4 Q. (BY MR. BROCK:) -- on the 5 left-hand side of the picture?</p> <p>6 MR. DAVIS: You can answer.</p> <p>7 A. Yes, sir.</p> <p>8 Q. (BY MR. BROCK:) When you have 9 been on site there, have you seen water moving 10 like that over the top of that material?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Does this occur every time that it 13 rains?</p> <p>14 A. It depends on the size --</p> <p>15 MR. DAVIS: Object -- object to 16 the form and foundation. Go ahead.</p> <p>17 A. Depends on the size of rainfall 18 event.</p> <p>19 MR. BROCK: Okay. I think that is 20 a good stopping point for lunch.</p> <p>21 (Whereupon, the lunch recess was 22 taken at 12:34 p.m. until 1:47 23 p.m.)</p>	<p>1 A. Yes, sir.</p> <p>2 Q. And I believe that's generally the 3 area we have been talking about, the refuse 4 area; does it appear that way to you?</p> <p>5 A. Yes, sir.</p> <p>6 Q. My question just so that some of 7 the terminology in this case can be a little 8 bit more consistent, can you tell is that mine 9 dump area depicted there, does that include 10 both the pre-law and the post-law area as 11 depicted in Exhibit 7?</p> <p>12 A. It appears that it is primarily 13 pre-law.</p> <p>14 Q. Okay. That helps clarify that.</p> <p>15 So you think what they are referring to in mine 16 dump is the pre-law area?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And Mr. Muncher estimated 19 that that was approximately twenty-five acres 20 in size; do you know if that is accurate or 21 would you agree with that?</p> <p>22 A. There was information that was in 23 some of the -- some of that -- in some of --</p>

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<p>1 some of the --</p> <p>2 MR. DAVIS: Exhibits.</p> <p>3 A. -- exhibits that I saw something.</p> <p>4 I had mentioned earlier about thirty, thirty</p> <p>5 some odd acres. I think that would be</p> <p>6 twenty-five to thirty-five acres, something in</p> <p>7 that range would be accurate.</p> <p>8 Q. Okay, fair enough. I'm handing</p> <p>9 you Exhibit 3 to the Muncher deposition. Take</p> <p>10 a look at that for me real quick.</p> <p>11 A. This is what you showed me</p> <p>12 earlier, right?</p> <p>13 Q. Yes, sir.</p> <p>14 A. Okay.</p> <p>15 Q. And you see in the legend over on</p> <p>16 the right --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- Area 2, it refers to as active</p> <p>19 washer refuse disposal area --</p> <p>20 A. Yes, sir.</p> <p>21 Q. -- do you see that?</p> <p>22 Is that the same as the, quote,</p> <p>23 post-law capped area in Exhibit 7?</p>	<p>1 put down some words to go with an area.</p> <p>2 Q. I got you. So I just wanted to</p> <p>3 make sure that active washer refuse didn't mean</p> <p>4 something different than a waste pile or mine</p> <p>5 dump or some of the other terminology.</p> <p>6 A. No, sir, I -- no, sir, I would not</p> <p>7 think so.</p> <p>8 Q. I want to show you some photos</p> <p>9 that we marked previously as Exhibit 21.</p> <p>10 A. Yes, sir.</p> <p>11 Q. If you would, just turn through</p> <p>12 those, there are three or four of them.</p> <p>13 A. (Reviewing photographs.) Yes,</p> <p>14 sir.</p> <p>15 Q. Have you seen any of these photos</p> <p>16 before?</p> <p>17 A. No, sir, I have not.</p> <p>18 Q. It is our present belief and</p> <p>19 understanding that these were taken in the</p> <p>20 1980s, most likely by PELA?</p> <p>21 A. Okay.</p> <p>22 Q. We are going to nail that down.</p> <p>23 On the first page of Exhibit 21, can you tell</p>
Page 138	Page 140
<p>1 A. Well, let me make sure. I see</p> <p>2 number one, number one. Number two, active</p> <p>3 washer is number two. Yes, sir, it appears</p> <p>4 that it is pointing as what is being described</p> <p>5 as capped area.</p> <p>6 Q. Right. And so I thought it was,</p> <p>7 but I want to make sure we are talking about</p> <p>8 the same thing. So that active washer refuse</p> <p>9 area in Exhibit 3 is the same as the capped</p> <p>10 area in Exhibit 7?</p> <p>11 A. Yes, sir, appears to be, yes.</p> <p>12 Q. Why does it refer to it as washer</p> <p>13 refuse disposal?</p> <p>14 A. I don't understand. Because there</p> <p>15 was washer refuse that was disposed of there,</p> <p>16 so that would -- that would be an accurate</p> <p>17 term.</p> <p>18 Q. Okay.</p> <p>19 A. And this -- you know, the words</p> <p>20 that are often put out here with stuff like</p> <p>21 this, that is just going to come down to the</p> <p>22 word usage that a lot of times an engineering</p> <p>23 technician is going to arrive at, you know, to</p>	<p>1 us what we are looking at in that picture?</p> <p>2 A. It appears to be a coarse refuse</p> <p>3 pile.</p> <p>4 Q. That black material that we see</p> <p>5 behind the tree line, is that what you would</p> <p>6 call coarse refuse?</p> <p>7 A. Yes, sir, uh-huh.</p> <p>8 Q. Is that -- can you tell by looking</p> <p>9 where that is on the site if that's the</p> <p>10 post-law capped area or not?</p> <p>11 A. No, sir, I can't really tell that.</p> <p>12 Q. The second photo in that</p> <p>13 exhibit --</p> <p>14 A. Okay.</p> <p>15 Q. -- what is that dark-colored</p> <p>16 material we see?</p> <p>17 A. Again, that's going to be a coarse</p> <p>18 refuse pile. The way it is flattened out, it</p> <p>19 appears it is being put in in compacted lifts.</p> <p>20 Q. Explain what you mean by that.</p> <p>21 A. It is being put in there by</p> <p>22 design, you know, where this is all flattened</p> <p>23 out and you have got piles that is on top of</p>

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<p>1 it. Those piles that are on top, obviously 2 this is being truck dumped. And when it is 3 flattened out like that, it means it is being 4 graded out by dozers and compacted in place. 5 That reduces infiltration into the material.</p> <p>6 Q. Can you tell what area of the site 7 that is by looking at it?</p> <p>8 A. No, sir, I can't. Were these 9 taken on the same dates, do you know?</p> <p>10 Q. We don't know yet.</p> <p>11 A. Okay. I am just looking at what 12 is truck dumped on top, you know. There is 13 different number -- so on this particular date, 14 you know, that's different areas. But I don't 15 -- I can't tell where that would be.</p> <p>16 Q. Would that be consistent with the 17 type of material that you described earlier in 18 terms of when you said you thought it would be 19 the same material that was in the post-law and 20 the pre-law area?</p> <p>21 A. Yes, sir, uh-huh.</p> <p>22 Q. Would the same material, to your 23 knowledge, also have been up in this area north</p>	<p>1 MR. DAVIS: Same objection, go 2 ahead.</p> <p>3 A. That would largely depend on where 4 are you talking about and the amount of 5 drainage area.</p> <p>6 Q. (BY MR. BROCK:) Well, assume I am 7 talking about a Water of the United States, a 8 tributary.</p> <p>9 A. Well, are you talking specifically 10 about this area (indicating)?</p> <p>11 Q. Well, I am asking the question 12 more generally.</p> <p>13 A. Again, it would -- you are going 14 to have to tell me what Waters of the United 15 States is --</p> <p>16 Q. Okay.</p> <p>17 A. -- because there's many, many 18 definitions for that, before I would say yes or 19 no.</p> <p>20 Q. And now specifically as to Maxine, 21 I think you told me earlier that there weren't 22 any permits --</p> <p>23 A. That is correct.</p>
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<p>1 of the capped post-law area?</p> <p>2 A. Yes, sir. Since it is all mined, 3 you know, from Maxine Mine, I would -- yes, it 4 would be very -- yes, it would be the same.</p> <p>5 Q. Have you ever -- first, did you 6 witness any of the capping work that was done 7 on this post-law area?</p> <p>8 A. No, sir.</p> <p>9 Q. Have you seen any design documents 10 that indicate how it was done?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you talked to anybody that 13 was involved in the process --</p> <p>14 A. No, sir.</p> <p>15 Q. -- Mr. Keeton or Mr. Musick, any 16 of them?</p> <p>17 A. No, sir.</p> <p>18 Q. Before we leave this one, I have a 19 follow-up question I don't think I asked you 20 earlier, but --</p> <p>21 Based on your knowledge and 22 experience, would you need a Corps permit to 23 build a dam in a Water of the United States?</p>	<p>1 Q. -- for those dams?</p> <p>2 A. That is correct. There is no 3 regulatory responsibility.</p> <p>4 Q. How is that determined?</p> <p>5 A. Well, by -- cause of -- and this 6 -- are you asking me -- you know, that is kind 7 of a -- this is all done obviously before I 8 went to work on any of this area, so I can't 9 really -- I can't give you an answer to that. 10 I mean, I can answer it, but it is not -- it 11 wouldn't be germane to this because of the 12 timing of it. Does that make sense?</p> <p>13 Q. Yes, sir. Let me ask it a little 14 different, I guess: Do you know who at 15 Drummond would have made a decision like that, 16 about whether --</p> <p>17 MR. DAVIS: Object to the form.</p> <p>18 A. It would have been ABC, wouldn't 19 have been Drummond, because this would have all 20 been prior to Drummond purchasing.</p> <p>21 Q. (BY MR. BROCK:) Right. But as 22 you said, the ABC people came into Drummond and 23 became part of the underground mine program.</p>

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<p>1 MR. DAVIS: Object to the form and 2 foundation. You can answer.</p> <p>3 Q. (BY MR. BROCK:) That is what you 4 said --</p> <p>5 A. I don't know who at ABC, you know, 6 would have made that determination or if there 7 was any design that was done for any of it. I 8 don't know who that would be.</p> <p>9 Q. Have you ever seen any memo that 10 addressed that --</p> <p>11 A. No, sir.</p> <p>12 Q. -- that said we have looked at 13 this and we don't have a responsibility to get 14 a permit to build these dams?</p> <p>15 A. No, sir.</p> <p>16 Q. I asked you earlier if you were at 17 a meeting with ADEM --</p> <p>18 A. Yes, sir.</p> <p>19 Q. -- that Mr. Muncher attended, and 20 you said no, right?</p> <p>21 A. That's correct.</p> <p>22 Q. Did you get a report from him 23 about that meeting?</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Tell us, for the record, what this 3 document is.</p> <p>4 A. Under the original Maxine permit, 5 there were two increments --</p> <p>6 Q. Let me stop you there. First, can 7 you tell me what it is so we can identify it?</p> <p>8 A. It is a revision to the Maxine 9 permit.</p> <p>10 Q. Is it the mining permit?</p> <p>11 A. Yes, sir, it would -- there was 12 one permit down there. And so, yes, it would 13 have included the -- it would have been the 14 mining permit, yes. Generally, yes, that is 15 true.</p> <p>16 Q. And this says that the permit was 17 divided into two separate bonding increments, 18 correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Why was that done that way?</p> <p>21 A. It was divided into two increments 22 initially -- or there were two -- there were 23 two increments. And this is going to lead up</p>
Page 146	Page 148
<p>1 A. No, sir, I did not.</p> <p>2 Q. Did you get a report from anybody 3 that attended it about that meeting and what 4 was discussed?</p> <p>5 A. No, sir.</p> <p>6 Q. I am actually going to show you 7 some things now that have your name on it.</p> <p>8 A. Oh, my. That's dangerous.</p> <p>9 Q. It could be.</p> <p>10 (Plaintiff's Exhibit 11 was marked 11 for identification.)</p> <p>12 Q. I am going to hand you what I have 13 marked as Exhibit 11; and this is a folder that 14 was produced in the documents you all pulled 15 from Jasper in a folder that looks like that.</p> <p>16 A. 1079?</p> <p>17 Q. Yes, sir. It is six pages, 18 Drummond 1079 through 1084.</p> <p>19 A. (Reviewing document.) Yes, sir.</p> <p>20 Q. Are you familiar with these 21 documents?</p> <p>22 A. Yes, sir.</p> <p>23 Q. If you would, turn to page 1083.</p>	<p>1 to the mining permit being separated out from 2 the slurry impoundment because Drummond was 3 going to keep the slurry impoundment under a 4 separate permit to in the future possibly 5 reclaim coal fines from it. And so it would 6 allow keeping the slurry impoundment area under 7 permit while you would be able to go ahead and 8 start effecting bond release for the mining 9 portion that had been completed and reclaimed.</p> <p>10 Q. Okay. Which of the increments was 11 the tailings pond in the coal mines?</p> <p>12 A. Increment I was the tailings pond 13 or the slurry -- slurry impoundment for fine 14 coarse refuse.</p> <p>15 Q. So that increment obviously 16 wouldn't include the mine dump area, right?</p> <p>17 A. That is correct.</p> <p>18 Q. Just so we are clear on this, was 19 the mine dump area included in Increment II or 20 not?</p> <p>21 A. The mine dump area that would have 22 been permitted would have been included in 23 Increment II. And most of that -- or all of</p>

<p style="text-align: right;">Page 149</p> <p>1 that mine dump area there toward the end of the 2 mine was actually this that is on Exhibit 3. 3 Q. Right. 4 A. You know, that would be across the 5 road over here, that is shown as Area 7 -- or 6 it is actually shown as Area 1 and it's 7 controlled by Outfall 7 -- or Outfall 23 that 8 is depicted as number seven. 9 Q. Okay. Let me ask my question 10 clearer. I was asking about the mine dump area 11 that is around Outfall 24 -- 12 A. Oh, okay. 13 Q. -- that we have been looking at 14 earlier. Was that -- 15 A. That was not included in that 16 Increment II, no. 17 Q. So it is not in either increment? 18 A. No, it is not. 19 Q. All right. If you would -- 20 A. I apologize for not being clearer 21 on that. 22 Q. No, that's fine, I am sure the 23 question was not clear either. It's hard with</p>	<p style="text-align: right;">Page 151</p> <p>1 stamped 2452. Can you tell us what that 2 document is first? 3 A. (Reviewing document.) This is 4 where there would have been a bond release 5 request that would have been made to the 6 Alabama Surface Mining Commission for Maxine. 7 And this is where the inspector has done his 8 review, and this is the amount of final bond 9 that was going to be released on Maxine for 10 sixty-nine acres. And it is where it has been 11 signed by the director of the ASMC recommending 12 a full release -- or full release is approved. 13 Q. Okay. It looks like it says Phase 14 II and III of Increment II; is that what this 15 applies to? 16 A. Yes, it would be Phase II -- this 17 would be for Phase II and Phase III, which 18 would be a final bond release for that permit 19 P-3252 -- excuse me, P-3254 Increment Number II 20 for sixty-nine acres. 21 Q. And this says the date is March 22 18th, 1992? 23 A. Yes, sir, that is correct.</p>
<p style="text-align: right;">Page 150</p> <p>1 so many questions, I understand. 2 A. That is a lot of area to be 3 looking at. 4 Q. If you would turn back to page 5 1080, I have one other question. 6 A. Yes, sir. 7 Q. So this indicates that Increment I 8 was decreased to one acre; what was going on 9 there? 10 A. Well, that -- you are talking 11 about why there was one acre that was left? 12 That would have been for a little -- as I 13 remember, a little road section, you know, that 14 could be -- that wasn't going to be a part of 15 the new permit. And so it was kept to where 16 you could get bond release off of it -- you get 17 a release off of it also. 18 (Plaintiff's Exhibit 12 was marked 19 for identification.) 20 Q. Just so we are clear on the record 21 and can clean this up about the bond release, 22 let me show you what I marked as Exhibit 12. 23 This is from Drummond's production, Bates</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. So is that the effective date of 2 the bond release? 3 A. Final bond release for Maxine, 4 yes. 5 Q. Do you know when the application 6 was made for Phase II and III release? 7 A. I don't -- from this, let's see if 8 it actually shows -- it doesn't show exactly 9 when it was made. 10 Q. Would you have handled that? 11 A. Yes, sir. But it would have been 12 a minimum of sixty-one days prior to this, 13 because that's the minimum time that it would 14 take to act on a bond release request. 15 Typically ASMC, it kind of varies a little bit 16 depending on everything that goes into it and 17 how long it takes for them to review something, 18 but it is usually going to take three to five 19 months to get a bond release or final bond 20 release on an area. 21 Q. Would you have handled that? 22 A. Yes, sir. 23 Q. I don't know that I want to go</p>

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<p>1 into all of it, but there are some documents 2 that indicate there may have been application 3 made for the bond release like years prior to 4 that, back in the '80s, and there were some 5 delays and issues; do you recall any of that?</p> <p>6 A. No, sir, not -- no, not 7 specifically. I just -- from reading what the 8 inspector says on the second page, you know, 9 that kind of sums everything up.</p> <p>10 Q. When he says there based on 11 complete pond removal plans, which ponds is 12 that a reference to?</p> <p>13 A. That would be referring to Pond -- 14 over here on Exhibit 3, it would refer to what 15 is noted as number four, which would be Pond 16 20, you know, was eliminated. Under number 17 seven, that would be Pond 23, it was 18 eliminated. Those two would have been 19 eliminated.</p> <p>20 What would have been shown as -- 21 well, it's not actually shown on here, but Pond 22 1, you know, that would have been for the 23 slurry pond area that was -- that was kept as a</p>	<p>1 Increment II. 2 Q. Right. 3 A. Yes, sir. 4 (Plaintiff's Exhibit 14 was marked 5 for identification.) 6 Q. Okay, Mr. Hicks, I am handing you 7 what has been marked as Exhibit 14. 8 A. (Reviewing document.) 9 Q. This is a letter from Mr. Musick 10 at Drummond to Southern Company about the 11 status of reclamation and bonding; have you 12 seen this document before? 13 A. (Reviewing document.) I have not 14 seen this as a part of what I have reviewed, 15 no, sir. 16 Q. Okay. At that time in '88, did 17 you say Mr. Musick was an engineer? 18 A. Yes, sir, he was. 19 Q. And a copy of this was sent to 20 Raymond Bishop? What was his job? 21 A. He was vice president of 22 engineering for Drummond Company. 23 Q. If you would, turn to the last</p>
Page 154	Page 156
<p>1 part of the new permit. And then Pond 24, 2 which is actually this one down here 3 (indicating), you know, it was left in place. 4 Q. Right. 5 A. So it would have been two ponds 6 that would have been eliminated. I think it is 7 interesting it says vegetation and trees are 8 good and exceeds standards, pond removal looks 9 good and is as planned. That is all good. 10 (Plaintiff's Exhibit 13 was marked 11 for identification.) 12 Q. Has any maintenance been done on 13 the site since 1992? 14 A. No, sir. 15 Q. Okay. Just get this in the 16 record. I am handing you what I have marked as 17 Exhibit 13, appears to be the bond release for 18 Increment I. Would you review it and confirm 19 that? 20 A. (Reviewing document.) Yes, that's 21 for the one acre that we talked about earlier. 22 That would have gone along with the same -- the 23 same thing that we just talked about for</p>	<p>1 page, 3578. 2 A. Yes, sir. 3 Q. This deals with Maxine, right? 4 A. Yes, sir, it does. 5 Q. In the second paragraph that deals 6 with Increment II -- do you see that? 7 A. Yes, sir. 8 Q. And the last -- or the second to 9 last sentence in that paragraph he says, I 10 intend to apply for a Phase II release. 11 And this was in 1988. Do you know 12 if that was done in '88? 13 A. Since we wound up getting a Phase 14 II/Phase III release in '92, I would say yes. 15 Q. Okay. In that paragraph, it also 16 notes that the Phase II bond release had been 17 denied because of inadequate stocking of pine 18 trees; do you remember that? 19 A. Well, it says only because the 20 trees had not been planted for at least two 21 growing seasons. So, you know, changed the 22 land use on it and was able to get a quicker 23 bond release on it than if you had to wait</p>

<p style="text-align: right;">Page 157</p> <p>1 additional time and put in the minimum of two 2 growing seasons on the pine seedlings. 3 Q. What was the land use changed from 4 and to? 5 A. From -- I think I saw -- I know 6 that I saw that somewhere in the information 7 that was put in here, and it was -- it was 8 something that would have tied in with the 9 grasses and legumes as being the ground cover 10 of the -- the cover material instead of it just 11 strictly being based on trees for forest use. 12 So it could have been called grazing land or 13 could have been undeveloped land, usually have 14 been one of those terms. 15 Q. So if the application was made in 16 '88 and we see that it was granted in '92, why 17 did it take four years, what is your 18 recollection? 19 A. I don't know -- I don't know 20 exactly what it would be, but it was probably 21 something -- and here I am getting probably, so 22 I don't want to deal in probablys. I can think 23 of a couple of different reasons, but --</p>	<p style="text-align: right;">Page 159</p> <p>1 Mr. Windham's position at that time in 1988? 2 A. At that time he was manager of 3 permitting. 4 Q. Have you seen this document 5 before? 6 A. This is not something that was in 7 all of the review information. 8 Q. Right, it is not in those 9 exhibits. This is just something that Drummond 10 produced to us. 11 A. I would be -- I would be familiar 12 with this information, yes. 13 Q. Let me direct your attention to 14 the third paragraph. It says that Drummond 15 pays the bond premium and other costs for 16 upkeep -- 17 A. Yes, sir. 18 Q. Do you see that sentence? 19 -- since Drummond has assumed this 20 site according to the negotiated settlement 21 with the Power Company. Is that Alabama Power 22 Company? 23 A. Yes, sir.</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. Well, I just want your 2 recollection as you sit here today, because I 3 think -- I mean, you said you were involved in 4 the reclamation and the bonding -- 5 A. Yes. 6 Q. -- so that's why I am asking. 7 A. See, the reclamation work, it 8 would have all been done by the underground 9 mining division. And so we -- Mr. Windham and 10 myself, you know, we would have been involved 11 from Drummond in the permitting reclamation 12 phase as far as effecting bond releases and 13 all. And so we could effect a bond release 14 just based on information that was given to us 15 by one of the mining divisions. Did that make 16 sense? 17 Q. Yeah, I understand what you mean. 18 A. Okay. 19 (Plaintiff's Exhibit 15 marked for 20 identification.) 21 Q. I have handed you Exhibit 15 to 22 the deposition. This is a Drummond memorandum 23 to Raymond Bishop from Bruce Windham. What was</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. When it says negotiated 2 settlement, what does that refer to? 3 A. That would have all -- that would 4 have all been tied in with a contract with 5 Alabama Power as far as the sale of coal. And 6 then, you know, Alabama Power had 7 responsibility for some of the costs, and then 8 there would be some things that -- in this 9 case, Drummond would have responsibility for 10 some of the costs. 11 Q. When it says a settlement, was 12 there some dispute or lawsuit between Drummond 13 and the Power Company? 14 A. No. This was about getting toward 15 the -- this was after all mining had been 16 completed, you know, reclamation would have 17 been completed, and so this would be more about 18 just transitioning from active mine costs and 19 getting it to a post-mine, just a reclamation 20 status. So, no, it wouldn't be because of any 21 kind of disagreement. 22 Q. What was the contractual 23 relationship between Drummond and Alabama Power</p>

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<p>1 as to Maxine Mine?</p> <p>2 A. Well, it was like a -- it was a</p> <p>3 cost plus mine. And so Alabama Power was</p> <p>4 responsible for the cost of producing coal, and</p> <p>5 so they were responsible for reclamation costs</p> <p>6 and things like that for the most part. It was</p> <p>7 just -- it was just a -- it was like a coal</p> <p>8 contract, you know.</p> <p>9 Q. That was a contract that existed</p> <p>10 between Alabama Power and ABC?</p> <p>11 A. Yes, sir, uh-huh.</p> <p>12 Q. And Drummond assumed it?</p> <p>13 A. That would be my understanding,</p> <p>14 yes, uh-huh.</p> <p>15 Q. Have you seen the actual contract?</p> <p>16 A. No, sir, I have not.</p> <p>17 Q. Do you know how ABC was paid for</p> <p>18 the mining activity that it conducted?</p> <p>19 A. No, sir, I wouldn't know, not</p> <p>20 specifically.</p> <p>21 Q. How would a mining company</p> <p>22 typically be paid in that kind of arrangement?</p> <p>23 A. Typically it would just be a --</p>	<p>1 area, that makes a good fire break. So we</p> <p>2 would be seeking, you know, to make sure that</p> <p>3 roads are going to be left as part of the</p> <p>4 post-mine land use.</p> <p>5 Q. Where would the roads be in</p> <p>6 reference to the permit map or whatever</p> <p>7 reference you want to use to tell us generally</p> <p>8 on site where they -- the roads it refers to in</p> <p>9 this letter were?</p> <p>10 A. I couldn't tell you specifically,</p> <p>11 you know, without looking at the map.</p> <p>12 Q. Did these roads end up being left</p> <p>13 in place?</p> <p>14 A. There is a -- it is just like --</p> <p>15 yes. I mean, they would become fire breaks</p> <p>16 more -- in the post-mine era, they would become</p> <p>17 more of a fire break, just an open area that</p> <p>18 would be say through the woods as opposed to it</p> <p>19 typically being a road. Now, in a couple of</p> <p>20 areas, you know, there is actually a road.</p> <p>21 Like the main entry road that went in to Maxine</p> <p>22 that went by the slurry impoundment and down</p> <p>23 into the mine, you know, it is still in place.</p>
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<p>1 they would be paid so much a ton, you know, to</p> <p>2 produce coal.</p> <p>3 Q. Have you ever seen any figures</p> <p>4 about the gross revenue that ABC derived from</p> <p>5 mining Maxine?</p> <p>6 A. No, sir, I have not.</p> <p>7 Q. Does Drummond have any records</p> <p>8 that would show that?</p> <p>9 A. I do not know.</p> <p>10 (Plaintiff's Exhibit 16 was marked</p> <p>11 for identification.)</p> <p>12 Q. Let me hand you what I have marked</p> <p>13 as Exhibit 16, appears to be a letter you wrote</p> <p>14 to the Surface Mining Commission; do you</p> <p>15 recognize that document?</p> <p>16 A. (Reviewing document.) Yes, sir.</p> <p>17 Q. What was the subject matter of</p> <p>18 this letter?</p> <p>19 A. On areas where we have trees that</p> <p>20 are going to be left as a part of the post-mine</p> <p>21 land use, good forestry practices dictate that</p> <p>22 you ought to have fire breaks on site. And a</p> <p>23 lot of times if you have roads that are in the</p>	<p>1 That would have been one of the roads that</p> <p>2 would have been left and would have actually</p> <p>3 been kept then as a part of the new permit.</p> <p>4 There was a road that would --</p> <p>5 there are a couple of gates out there -- since</p> <p>6 you have been out there, a couple of those</p> <p>7 yellow gates that would show up on the left as</p> <p>8 you are going down toward the river, you know.</p> <p>9 Those would have been some of the roads that</p> <p>10 would become fire breaks. They would have been</p> <p>11 left in place.</p> <p>12 Q. Okay.</p> <p>13 (Off-the-record discussion.)</p> <p>14 Q. (BY MR. BROCK:) Mr. Hicks, if you</p> <p>15 will take a look at that, we previously marked</p> <p>16 that as Exhibit 14. I'm just trying to make</p> <p>17 sure I am getting the chronology straight about</p> <p>18 the bond release application.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is this a letter you wrote?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What was the purpose of this</p> <p>23 letter?</p>

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<p>1 A. Under the Surface Mining Act law 2 and regulation, any time that you are seeking a 3 bond release, whether it's Phase I, Phase II or 4 Phase III, you have to -- there are different 5 entities that you have to make notification to 6 for -- as part of the public comment period. 7 And so the County government is 8 one of them that you have to notify. And so 9 that's why Jefferson County would be notified 10 of what our intentions are. And if they have 11 any questions, comments, well, then that gives 12 them thirty days to make comments to the 13 Surface Mining Commission. And all of that has 14 to be taken into account as part of their bond 15 release deliberations.</p> <p>16 Q. Okay. And what is the date of 17 this letter?</p> <p>18 A. This is February 3rd of 1992.</p> <p>19 Q. And in the first paragraph it 20 seems to indicate -- well, it says that you are 21 giving notification that Drummond has filed an 22 application for Phase II and III release.</p> <p>23 A. Yes, sir.</p>	<p>1 would have been requested, yes. See, it's -- 2 the last paragraph down there, you will note 3 that it says such request must be received no 4 later than March 28th, 1992. So that would 5 give the County that time frame that I was 6 talking about if they were going to -- if they 7 had any comments to make.</p> <p>8 Q. Okay. And I presume they did not 9 in this instance?</p> <p>10 A. That is correct.</p> <p>11 Q. Okay. You are looking at Exhibit 12 16 to the Muncher deposition?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Tell us what that document is.</p> <p>15 A. We -- Drummond for the Maxine Mine 16 would be asking for termination of monitoring 17 for the four outfalls that would have been for 18 NPDES Permit AL 0001724, Maxine Mine.</p> <p>19 Q. And why were you asking ADEM for 20 permission to stop monitoring?</p> <p>21 A. That's the law and regulations 22 that we operate under for ASMC and for ADEM for 23 an NPDES permit. The protocol is that if you</p>
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<p>1 Q. Does that mean that that happened 2 around that time, February 3rd of '92, or are 3 you giving them notice then about something 4 that happened earlier?</p> <p>5 A. No, this is making the County 6 aware that we have filed an application for a 7 bond release.</p> <p>8 Q. Would you normally make the County 9 aware contemporaneously with when you file the 10 application?</p> <p>11 A. Yes, sir. It would be -- yes.</p> <p>12 You would make the application, you know, with 13 the ASMC and then you would be notifying 14 Jefferson County, you know, within a thirty-day 15 window.</p> <p>16 Q. So based on this letter, do you 17 think the application was made in '92?</p> <p>18 A. Yes, sir.</p> <p>19 Q. I think earlier I said 1988, and 20 that appears that that is incorrect; it was 21 1992, right?</p> <p>22 A. Yes, sir, that's -- that's when 23 the -- I will call it the final bond release</p>	<p>1 have an area that's ready for a Phase III bond 2 release, well, then you seek bond release -- 3 final bond release from ASMC. And once you 4 prove to them that -- you know, that everything 5 is taken care of as far as law and regulations 6 are concerned and you go through and -- go 7 through all of the potential for hearings and 8 everything and you get through all of that and 9 they grant you a final bond release, well, then 10 you have to then turn around and seek -- it's 11 like seeking a release then from ADEM for your 12 NPDES permit. And that always -- that's all -- 13 that involves monitoring releases for ponds, 14 because that is what they are concerned with 15 totally.</p> <p>16 Q. Well, Outfall 24, though, is not a 17 pond, is it?</p> <p>18 A. It appears.</p> <p>19 Q. Well, we looked at this permit 20 earlier, you may remember. It was the one that 21 said receding water unnamed tributary at Locust 22 Fork?</p> <p>23 A. Yes, that is correct. The way</p>

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<p>1 this is -- see, this is -- ASMC and ADEM are 2 joined at the hips. You know, one follows the 3 other. But, see, like some of these -- like 4 Pond 24, you know, that -- I would say it 5 predated ASMC permit at Maxine. There would 6 have been -- because of the timing of when laws 7 and everything went into effect, there would 8 have been an ADEM -- or at that time an AWIC 9 permit that would have been in place before 10 there was an ASMC mining permit.</p> <p>11 And so this Outfall 24 would have 12 been a part of that NPDES permit but not 13 necessarily something that would have been 14 covered, you know, under ASMC mining permit. 15 And so, you know, it -- I would say that that 16 would be the reason why it's showing up on 17 this.</p> <p>18 Q. Did you say there was a permit -- 19 a discharge permit issued by AWIC?</p> <p>20 A. Yes, there was an NPDES permit for 21 Maxine Mine, yes.</p> <p>22 Q. Well, it is my understanding that 23 the terminology NPDES permit came into effect</p>	<p>1 information and all, there was a renewal 2 request that was made to ADEM for the Maxine 3 NPDES permit asking for an extension in 1988.</p> <p>4 Q. Right.</p> <p>5 A. So --</p> <p>6 Q. Let me stop you. This that we 7 looked at earlier, this permit which is Exhibit 8 33 --</p> <p>9 A. Yes, sir.</p> <p>10 Q. -- it was issued in 1988 and 11 expired in October of 1993.</p> <p>12 A. Yes, sir.</p> <p>13 Q. Was that the last --</p> <p>14 A. That would have been the last 15 permit. And so that permit had expired in 16 1993, but if you seek and if you get approval 17 for monitoring releases of everything that is 18 associated with that permit, those four 19 outfalls, well, then you can ask for 20 termination of that permit before its 21 expiration date. Does that make sense?</p> <p>22 Q. Yes. Did Drummond ask for 23 termination of it?</p>
<p>1 after the Clean Water Act in 1972; so when did 2 ADEM replace AWIC, to your recollection?</p> <p>3 A. I don't remember the exact date.</p> <p>4 Q. Or year?</p> <p>5 A. Or the -- I don't even remember 6 the exact year, but they -- they -- for all 7 practical purposes, they were one and the same.</p> <p>8 Q. How far back does this discharge 9 permit go, the NPDES permit, when was it first 10 issued?</p> <p>11 A. Well, based on what is in the 12 information, it would go back to sometime in 13 the mid-'70s, I would think.</p> <p>14 Q. When did it expire?</p> <p>15 A. The ADEM NPDES permit?</p> <p>16 Q. Yes, sir.</p> <p>17 A. It would not -- there was a --</p> <p>18 these permits, both ASMC and ADEM or AWIC for 19 that matter, you know, their permits are for 20 five-year periods.</p> <p>21 Q. Right.</p> <p>22 A. And they don't run together. So 23 there would have been -- from looking at the</p>	<p>1 Page 170</p> <p>1 A. I don't -- I don't remember if we 2 asked for termination of it or not, because 3 there was --</p> <p>4 Q. Is that what that letter means or 5 is termination something different?</p> <p>6 A. This asks for termination of 7 monitoring, and it doesn't specifically say, 8 you know, that we were asking for termination 9 of the permits. Most of the time we just let 10 the permits expire instead of going through, 11 you know, another paperwork shuffle. So the 12 termination of monitoring, you know, that was 13 -- that's the important part. You know, 14 whether the permit actually extends for another 15 six months or a year or even two years after 16 that, once monitoring is released, well, then 17 the rest of it is kind of a moot issue.</p> <p>18 Q. Okay. Look at the other letter 19 that you have there that is marked Exhibit 16.</p> <p>20 A. Yes, sir.</p> <p>21 MR. DAVIS: 17.</p> <p>22 A. 17.</p> <p>23 Q. (BY MR. BROCK:) And tell us what</p>

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<p>1 that is.</p> <p>2 A. This is where they are -- where</p> <p>3 ADEM is granting the release of monitoring for</p> <p>4 Outfalls 1, 20, 23 and 24, you know, that was</p> <p>5 requested earlier in July.</p> <p>6 Q. All right. After that point, July</p> <p>7 of 1992, did Drummond do any monitoring at</p> <p>8 Outfall 24?</p> <p>9 A. No, sir, we did not.</p> <p>10 Q. For the period that the permit was</p> <p>11 in effect, '88 to '93, did Drummond keep</p> <p>12 regular discharge monitoring reports for</p> <p>13 Outfall 24?</p> <p>14 A. Would you state that again?</p> <p>15 Q. Right. During the period when</p> <p>16 this NPDES permit was in effect, Exhibit 33,</p> <p>17 from '88 to '93, did Drummond keep discharge</p> <p>18 monitoring reports or DMRs?</p> <p>19 A. There would have been discharge</p> <p>20 monitoring reports that would have been</p> <p>21 completed, yes, and kept up until the point</p> <p>22 that we received the approval for monitoring</p> <p>23 release.</p>	<p>1 Q. (BY MR. BROCK:) I am a little</p> <p>2 confused about something --</p> <p>3 A. Okay.</p> <p>4 Q. -- with these documents we were</p> <p>5 just looking at.</p> <p>6 A. Yes, sir.</p> <p>7 Q. So you have 17 in front of you,</p> <p>8 the Muncher 17 document. And so as you were</p> <p>9 testifying before to this connection between</p> <p>10 the bond release and the release of the duty to</p> <p>11 monitor at discharge points, right?</p> <p>12 A. Yes, sir, uh-huh.</p> <p>13 Q. So my question is if Outfall 24 is</p> <p>14 not within the bonded area and there was no</p> <p>15 requirement to reclaim it, how would that have</p> <p>16 anything to do with the discharge permit?</p> <p>17 A. Any of these outfall points for a</p> <p>18 discharge permit, you know, they are usually</p> <p>19 put in place before any disturbance is going to</p> <p>20 happen. So it's going to start out as a</p> <p>21 proposed outfall and then as it becomes -- as</p> <p>22 you need to disturb an area, then it is going</p> <p>23 to convert from proposed, you know, to --</p>
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<p>1 Q. Okay. Have you seen those</p> <p>2 discharge reports?</p> <p>3 A. Jeez. I don't know if I have seen</p> <p>4 them or not. I'm sure, yes, back when they</p> <p>5 would have been done, yes, I would have seen</p> <p>6 them.</p> <p>7 Q. Okay. Did you sign off on them or</p> <p>8 who would have signed them for Drummond?</p> <p>9 A. I would have, yes, sir.</p> <p>10 Q. Do you remember signing DMRs for</p> <p>11 -- specifically for Outfall 24?</p> <p>12 A. I signed hundreds of these things.</p> <p>13 So that would have been a routine thing that I</p> <p>14 would have done.</p> <p>15 Q. Back in that time frame, '88 to</p> <p>16 '93, how did you submit the DMRs to ADEM?</p> <p>17 A. They were paper copies that were</p> <p>18 submitted.</p> <p>19 Q. Did you mail them?</p> <p>20 A. Yes, sir.</p> <p>21 (Off-the-record discussion.)</p> <p>22 (Whereupon, a break was had from</p> <p>23 2:50 p.m. until 3:01 p.m.)</p>	<p>1 Q. Existing --</p> <p>2 A. -- existing.</p> <p>3 Q. -- right?</p> <p>4 A. That's right. And so that's going</p> <p>5 to be -- that's, you know, that's duly noted</p> <p>6 then. But these outfall points, I would say</p> <p>7 those were set up with ADEM before there was</p> <p>8 any ASMC permitting. Does that make sense?</p> <p>9 Q. Yeah, it does. But what I am</p> <p>10 saying is I can understand a connection if an</p> <p>11 outfall was within the permit boundaries for</p> <p>12 the ASMC permit --</p> <p>13 A. Okay.</p> <p>14 Q. -- how there might be a connection</p> <p>15 between the bond release and the duty to</p> <p>16 monitor those outfalls within the permit area,</p> <p>17 okay?</p> <p>18 A. Okay.</p> <p>19 Q. But we have established that 24</p> <p>20 was not within --</p> <p>21 A. An ASMC permit.</p> <p>22 Q. Right.</p> <p>23 A. Correct.</p>

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<p>1 Q. So how would the bond release have 2 anything to do with that outfall?</p> <p>3 A. Well, it would have more to do 4 with the other outfalls.</p> <p>5 Q. Right.</p> <p>6 A. 1 -- actually, you know, it would 7 have dealt more with 20 and 23 from the ASMC 8 standpoint.</p> <p>9 Q. And I can follow that.</p> <p>10 A. Right, okay. But including 1 and 11 24 on there at ADEM, you know, that would be 12 more of -- I will call it a housekeeping thing, 13 you know, to clear out any and all monitoring 14 that you would have with ADEM for this permit.</p> <p>15 Q. A housekeeping matter?</p> <p>16 A. Yeah, yeah. Because, see, 17 whenever you -- if you get -- when you get your 18 final bond release from ASMC for what we are 19 calling post-mine disturbance or for 20 post-law -- pre-law/post-law, for post-law 21 disturbance, you have to have an NPDES permit 22 for any of those areas that was permitted under 23 ASMC post-law.</p>	<p>1 monitoring release.</p> <p>2 Q. But ADEM's permits are issued 3 under the Clean Water Act and not the mining 4 laws?</p> <p>5 A. Correct.</p> <p>6 Q. You know that, right?</p> <p>7 A. Absolutely.</p> <p>8 Q. Have you got Number 15 there? In 9 the third paragraph of that, this relates to 10 what you were just talking about, something 11 about the other ponds, can you read that 12 paragraph for me?</p> <p>13 A. Increment Number II is --</p> <p>14 Q. You don't have to read it out 15 loud. I just mean take a look at it, 16 familiarize yourself with it.</p> <p>17 A. Okay.</p> <p>18 MR. DAVIS: Read before you 19 testify.</p> <p>20 A. You would rather me read this, 21 hadn't you? (Reviewing document.) Okay.</p> <p>22 Q. (BY MR. BROCK:) This is talking 23 about Pond 20, right?</p>
<p>1 And so any time you have an NPDES 2 monitoring permit, at some point, you know, you 3 have got to either keep it permitted or you 4 have to seek and gain approval of a monitoring 5 release. And so those four outfalls showed up 6 on this NPDES permit and that coincided with an 7 ASMC permit. So it was just after you get your 8 ASMC bond release, within -- you know, you are 9 going to seek a monitoring release from ADEM. 10 And that's what we sought and they granted it. 11 I'm not sure that you are --</p> <p>12 Q. No, I see they granted it.</p> <p>13 A. Yeah.</p> <p>14 Q. I am not disputing that. Did you 15 have any conversation with them in particular 16 about why Outfall 24 was included in this 17 monitoring relief?</p> <p>18 A. Well, there was no -- see, all of 19 this ties back to ASMC requirements as far as 20 disturbance of mining. Well, this 24 was not 21 something that was disturbed for mining under 22 ASMC, so there was no reason why something 23 would be kept under ADEM. So they granted a</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Was it ultimately removed?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And was that necessary in order to 5 get the complete bond release?</p> <p>6 A. Yes, sir. You either have to 7 remove them or you have -- you can leave them 8 in place as a permanent water impoundment. And 9 so, you know, we opted to remove Pond 20. 10 That's the one that is there adjacent, you 11 know, to the barge lowdown. And I will call it 12 an industrial pond. I mean, it didn't have 13 fish and wildlife value.</p> <p>14 Q. Okay.</p> <p>15 A. So the best thing to do was to get 16 it in shape to where it could be capped, 17 removed -- capped, re-vegetated and considered 18 to be removed where there is no discharge from 19 it any longer.</p> <p>20 Q. Okay. But the pond or basin that 21 was associated with Outfall 24 was not removed, 22 is that correct?</p> <p>23 A. That is correct.</p>

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1 Q. It is still there today, right?	1 -- that would be part of the construction of
2 A. Yes, sir. It had good water	2 that lower dam.
3 quality, so it could be left in place for fish	3 Q. Has Drummond maintained this
4 and wildlife purposes. It is growing frogs and	4 spillway area in any way since it took
5 fish and turtles and everything now.	5 possession of the property?
6 (Plaintiff's Exhibit 17 was marked	6 A. No, sir.
7 for identification.)	7 Q. Has it replaced any of the rock on
8 Q. Mr. Hicks, if you would, look at	8 the spillway?
9 what I have marked as Exhibit 17.	9 A. No, sir.
10 A. (Reviewing document.) Okay.	10 Q. Have you viewed this spillway and
11 Q. Can you tell us what is depicted	11 dam from that vantage point on the river
12 in that photo?	12 before?
13 A. No, sir.	13 A. Have I seen it from the river,
14 Q. This is a picture taken on May	14 from this --
15 24th, 2006 by the Riverkeeper from a patrol	15 Q. Right.
16 boat in Locust Fork; do you recognize --	16 A. No, sir.
17 A. Oh, okay.	17 Q. Have you seen this spillway when
18 Q. Do you recognize anything in that	18 it had water flowing over it?
19 photo?	19 A. Yes, sir, uh-huh.
20 A. After you said that and that this	20 Q. Is that water coming from the
21 is -- you are saying this is edge of the river	21 sediment basin behind it?
22 here, then, right?	22 A. Yes, sir, uh-huh.
23 Q. Yes, sir.	23 Q. The material that you see along
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1 A. Okay. That is going to be the	1 the shoreline below the dam, is that mine
2 dam, part of the dam and the spillway that is	2 waste?
3 going to be adjacent to the Locust Fork. Would	3 A. It just looks like shoreline to me
4 be what you call Dam Number 1, or that is going	4 at low water level.
5 to be the outfall of Dam Number 1.	5 Q. Does that look like a natural
6 Q. Right. On the river side, right?	6 Locust Fork shoreline to you?
7 A. Yes, sir.	7 A. I've seen -- yes, I've seen areas
8 Q. What are the stones or boulders	8 like that along the Locust Fork that look like
9 that we see in that area?	9 that, yes, sir.
10 A. It's going to be rip-rap that	10 Q. Were all of those areas adjacent
11 would help stabilize that spillway from that	11 to mines?
12 dam. We had talked about earlier looking	12 A. That I wouldn't know.
13 downstream, you know, that the spillway was on	13 Q. Yeah, in the middle of the
14 the left-hand side. Well, looking at it from	14 spillway there, do you see visual evidence of
15 the river, obviously that would be on the	15 -- that the water has been coming over the
16 right-hand side, so this is on my right-hand	16 rocks there?
17 side of the dam looking upstream.	17 A. I would say from the -- you are
18 Q. Do you know who placed this	18 talking about from the differential, the
19 rip-rap on the dam?	19 difference in the coloration and all?
20 A. From looking at all of the	20 Q. Right. Yes, sir.
21 information and everything, I would say that	21 A. I would say that could possibly be
22 ABC employees or contractors under ASMC -- I'm	22 evidence, yeah, where water would have come
23 sorry, not ASMC, under ABC would have, you know	23 over that.

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<p>1 Q. Since this lawsuit was filed in 2 2016, has Drummond done anything to this area, 3 maintenance or any kind of work?</p> <p>4 A. No, sir.</p> <p>5 Q. Has it done any cleanup of the 6 shoreline along here?</p> <p>7 A. No, sir.</p> <p>8 Q. Do you believe anything needs to 9 be done to clean up --</p> <p>10 A. No, sir.</p> <p>11 Q. -- the shoreline? (Plaintiff's Exhibit 18 was marked 12 for identification.)</p> <p>14 Q. Let me show you this next photo, 15 Exhibit 18. This photo was taken on May 31st, 16 2006 of the Riverkeeper. It is just a little 17 closer-up view of the same dam we were looking 18 at.</p> <p>19 A. Yes, sir, and when did you say the 20 date was on the other one, 17?</p> <p>21 Q. It was the 24th of May of 2006.</p> <p>22 A. Okay. Basically the same time, 23 then.</p>	<p>1 Q. Does it look like in photo 19 that 2 it's degraded --</p> <p>3 MR. DAVIS: Object to the form.</p> <p>4 Q. -- and lost some of the rip-rap 5 that was placed on it?</p> <p>6 MR. DAVIS: Object to the form.</p> <p>7 You can answer.</p> <p>8 A. There could be possible -- you 9 know, very minor degradation on 19 compared to 10 17, but there is no -- there is no significant 11 difference.</p> <p>12 Q. (BY MR. BROCK:) Do you see in 13 photograph 19 that there is water flowing over 14 the spillway?</p> <p>15 A. Yes, sir.</p> <p>16 Q. So Drummond is not disputing that 17 water discharges at that spillway into the 18 Locust Fork, are you?</p> <p>19 A. Any time you have a certain size 20 precipitation event that is going to be in this 21 area, well, then you would have a discharge 22 through that spillway, yes, sir.</p> <p>23 Q. And there is no permit in place</p>
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<p>1 Q. About a week later, yeah.</p> <p>2 A. Okay.</p> <p>3 Q. You see the sort of large stones 4 that are along the shoreline there in the 5 foreground of the picture?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Were they placed there or did they 8 roll down off of a dam there, in your opinion?</p> <p>9 A. I don't know. Looks basically 10 like this today.</p> <p>11 (Plaintiff's Exhibit 19 was marked 12 for identification.)</p> <p>13 Q. All right. I am going to show you 14 now what I marked as Exhibit 19. This photo 15 was taken on June 15th, 2016.</p> <p>16 A. Okay.</p> <p>17 MR. DAVIS: Could you give the 18 date again, please?</p> <p>19 MR. BROCK: June 15th, 2016.</p> <p>20 Q. (BY MR. BROCK:) Can you compare 21 Exhibit 17 and Exhibit 19? Does the spillway 22 area look the same to you in those two photos?</p> <p>23 A. Very similar.</p>	<p>1 for that discharge, right?</p> <p>2 A. That is correct.</p> <p>3 Q. Is the spillway designed to be -- 4 for emergency flow or is it designed to allow 5 surface water to discharge there under normal 6 rain conditions?</p> <p>7 A. I couldn't answer, couldn't answer 8 that.</p> <p>9 Q. Does the fact that the basin 10 behind it is full of material contribute to the 11 discharge of water at that outfall?</p> <p>12 A. It would make very little 13 difference. This has been in place for, what 14 -- based on all of the information and all, 15 this has been in place for thirty years or 16 more? And looks pretty stable to me.</p> <p>17 Q. I was asking about the surface 18 water flowing over. Are you saying it wouldn't 19 make any difference in terms of how much 20 surface water was discharged there if the 21 sediment basin was full or empty?</p> <p>22 A. If your sediment basins were 23 empty, well, then you had a rainfall event,</p>

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<p>1 then for some period of time you would be 2 filling up the basin possibly before you would 3 have a discharge to the spillway if the 4 sediment basin was empty. On the other hand, 5 if the sediment basin is full of water and you 6 had a precipitation event, well, then it is not 7 going to make any difference.</p> <p>8 Q. Well, I am saying if it's full of 9 waste like it is now versus empty. If it were 10 empty, the water would pond behind the dam, 11 right?</p> <p>12 A. And it would be full of water -- 13 or largely full of water.</p> <p>14 Q. Well, not all the time.</p> <p>15 MR. DAVIS: Object to the form.</p> <p>16 A. Okay.</p> <p>17 Q. (BY MR. BROCK:) If it -- okay, if 18 that sediment basin were excavated now, do you 19 think it would pond and fill with water as a 20 certainty?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know how long it would take 23 for that to happen?</p>	<p>1 ask them.</p> <p>2 A. I am sorry.</p> <p>3 Q. (BY MR. BROCK:) Well, I will 4 answer. Because it destroyed a slough and a 5 tributary that was there before mining and it's 6 polluting the Locust Fork. Aside from that --</p> <p>7 MR. DAVIS: So they allege.</p> <p>8 Q. (BY MR. BROCK:) If you want to 9 ask me questions, I will answer them, but I 10 don't think Richard will like that.</p> <p>11 A. I am not going to ask you any more 12 questions.</p> <p>13 MR. DAVIS: That is the plan.</p> <p>14 Just answer his questions.</p> <p>15 (Plaintiff's Exhibit 20 was marked 16 for identification.)</p> <p>17 Q. (BY MR. BROCK:) Let me show you 18 what I have marked as Exhibit 20. This is a 19 photo that was taken on June 12th, 2017.</p> <p>20 A. (Reviewing photograph.) Okay.</p> <p>21 Q. Do you see the two large boulders 22 up here at the top by the person that is 23 standing there in the green shirt?</p>
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<p>1 A. No, sir, I absolutely don't know.</p> <p>2 Q. Has Drummond done anything since 3 2016 when this lawsuit was filed to try to stop 4 or limit the discharge of water at that 5 outfall?</p> <p>6 A. No, sir.</p> <p>7 Q. I think I asked you this earlier, 8 but, if you know, what kind of permit do you 9 think would be required to remove this dam and 10 spillway --</p> <p>11 MR. DAVIS: Object to the form to 12 the extent --</p> <p>13 Q. -- if any?</p> <p>14 MR. DAVIS: -- to the extent it 15 asks for a legal conclusion. You can answer. 16 You can answer.</p> <p>17 A. I don't see that you would have to 18 have any permit to remove that. But why would 19 you remove it?</p> <p>20 MR. DAVIS: You have to answer 21 questions --</p> <p>22 A. I'm sorry.</p> <p>23 MR. DAVIS: -- you don't get to</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Do you know if those were added at 3 some time to that spillway by Drummond?</p> <p>4 A. No, sir, they would not have been 5 added by Drummond, no, sir.</p> <p>6 Q. So your testimony is there hasn't 7 been any shoring up of that spillway by 8 Drummond since it took possession of the 9 property?</p> <p>10 A. That is correct.</p> <p>11 Q. And you would be the person at 12 Drummond that would have the most knowledge 13 about that?</p> <p>14 A. If we would have done anything 15 like that, yes, I would have done it. And I 16 didn't do it.</p> <p>17 (Plaintiff's Exhibit 21 was marked 18 for identification.)</p> <p>19 Q. I will hand you what I have marked 20 as Exhibit 21. This is a photo of the outfall 21 taken on --</p> <p>22 A. You weren't going to mark that as 23 an exhibit?</p>

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1 Q. It is on the back.	1 A. It appears to be what you call Dam
2 A. I got you, okay. I'm sorry, what	2 Number 1 and the area above it.
3 did you say?	3 Q. All right. And behind it, Dam
4 Q. This photo was just taken last	4 Number 1, the grayish-looking area, is that the
5 month on May 4th, 2018.	5 sediment basin we have been talking about?
6 A. Okay.	6 A. Yes, sir.
7 Q. Do you see the flow --	7 Q. And up river of that, you see what
8 A. Yes, sir.	8 looks like a clump of trees; is that the second
9 Q. -- coming over the dam there?	9 dam?
10 A. Yes, sir.	10 A. Based on what I've seen, I would
11 Q. Is that seasonal?	11 say yes. It's in that proximity, yes, sir.
12 A. It's going to be -- it could be.	12 Q. And behind that do you see another
13 It is more related to precipitation events.	13 gray area that is a sediment basin?
14 And so normally have more rain during the	14 A. Yes, sir.
15 winter, late fall and into the winter, so from	15 Q. Okay. Looking at the picture to
16 that standpoint it might be more seasonal, but	16 the left of that upper sediment basin, what is
17 it is primarily related to rainfall events.	17 this area that you see in the picture there
18 Q. Do you see the material here at	18 that it doesn't have any trees on it?
19 the bottom right corner of the page?	19 A. It appears to be abandoned coarse
20 A. Yes, sir.	20 refuse.
21 Q. Is that mine waste?	21 Q. Would that be the pre-law refuse
22 MR. DAVIS: Object to the form.	22 pile?
23 You can answer.	23 A. Yes, sir.
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1 A. Could be. Not necessarily,	1 Q. Would you say that that picture
2 though.	2 shows evidence of substantial erosion of that
3 Q. (BY MR. BROCK:) Could be?	3 pile?
4 A. Possibly.	4 MR. DAVIS: Object to the form and
5 Q. Since this lawsuit was filed in	5 foundation. You can answer.
6 2016, has Drummond done any testing -- soil	6 A. Over a long period of time, yes.
7 testing of the material there along the	7 Q. (BY MR. BROCK:) And to the left
8 shoreline?	8 of the upper dam, this area --
9 A. Not that I am aware of. Drummond	9 A. Yes, sir.
10 hasn't, no.	10 Q. -- I am pointing directly to the
11 Q. Has somebody done it on Drummond's	11 left of the upper dam, what is that area?
12 behalf?	12 A. It's tree-covered canopy.
13 A. It's possible, but that's -- I	13 Q. Is that part of the mine dump?
14 haven't had anything to do with any of it.	14 A. You know, I -- as I remember from
15 (Plaintiff's Exhibit 22 was marked	15 having seen -- walked over some of the site, in
16 for identification.)	16 the -- in the area that's -- if you are looking
17 Q. All right. If you would, take a	17 upstream from Dam Number 2, the area that's
18 look at Exhibit 22 to your deposition. This is	18 going to be immediately to the right there,
19 an aerial photo that was taken on November	19 some of that would be coarse refuse. But I
20 17th, 2006.	20 think it is just kind of a fairly narrow strip
21 A. Yes, sir.	21 there that would be coarse refuse, I believe.
22 Q. Do you recognize that to be the	22 Q. On the area to the left of the
23 Maxine mine site?	23 upper dam?

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<p>1 A. Looking upstream, it would be to 2 the right --</p> <p>3 Q. Right.</p> <p>4 A. -- of the upper dam, yes.</p> <p>5 Q. So you are saying some of that is 6 coarse refuse, but not all of it?</p> <p>7 A. Right.</p> <p>8 MR. DAVIS: Barry, what was the 9 date?</p> <p>10 MR. BROCK: That one was November 11 17th of 2006.</p> <p>12 MR. DAVIS: Thank you.</p> <p>13 Q. (BY MR. BROCK:) Has Drummond done 14 any flyovers over the property to take 15 photographs?</p> <p>16 A. Not that I am aware of.</p> <p>17 Q. Mr. Muncher said he looked at some 18 aerial photographs; I was just wondering if 19 those were photographs Drummond had taken.</p> <p>20 A. He mentioned to me that he had 21 looked at some -- I think it was Google Earth 22 photos. That's the only thing that I have 23 heard him talk about. We -- you know, we have</p>	<p>1 Q. Is this a part of Dam Number 2?</p> <p>2 A. I think it is. I think looking 3 upstream, this is going to be the very 4 right-hand edge of it. I believe that's right.</p> <p>5 Q. Would you say that this photo 6 shows a breach through the dam?</p> <p>7 A. No, sir, I wouldn't call that a 8 breach.</p> <p>9 Q. What would you call that opening 10 that we see in the picture?</p> <p>11 A. Well, first, if it was a breach, 12 you know, the whole thing would be gone. And 13 so this is just -- you know, this is where 14 water has run over the top of it and has eroded 15 off a portion of the material. But it's not a 16 breach.</p> <p>17 Q. So water has eroded away part of 18 the dam, that is how you would describe it?</p> <p>19 A. Eroded -- yes, I would say it has 20 eroded away a top portion of it.</p> <p>21 Q. Has Drummond done any maintenance 22 on this dam since it took possession of the 23 property?</p>
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<p>1 discussed, you know, doing an aerial flyover of 2 it, but I don't believe that that has been done 3 to date.</p> <p>4 Q. Okay.</p> <p>5 (Plaintiff's Exhibit 23 was marked 6 for identification.)</p> <p>7 Q. Let me show you what I have marked 8 as Exhibit 23; that is another aerial photo 9 from same day, November 17th, 2006.</p> <p>10 A. Yes, sir.</p> <p>11 Q. Can you tell what is shown in that 12 photograph?</p> <p>13 A. Again, it appears to be the Dam 14 Number 1 and a portion of the pond area above 15 it.</p> <p>16 (Plaintiff's Exhibit 24 was marked 17 for identification.)</p> <p>18 Q. Take a look at Exhibit Number 24, 19 please. Can you tell us what is shown in that 20 photograph?</p> <p>21 A. I recognize this as a portion of 22 -- this is going to be the area where Dam 23 Number 2 would be upstream from Dam Number 1.</p>	<p>1 A. No, sir.</p> <p>2 Q. Has it performed any work on it 3 since 2016 when the lawsuit was filed?</p> <p>4 A. No, sir.</p> <p>5 Q. Are these large boulders that we 6 see in the front of the picture, were those 7 added there by Drummond?</p> <p>8 A. You know, I can't tell. I mean, 9 you get -- you get to -- this is going to be 10 along the edge of an embankment, a hillside, 11 and so it is hard to tell if that is something 12 that was placed there or if that is actually a 13 part of the natural outslope, the hillside 14 there and it just eroded down to that -- this 15 has become -- this has gotten to that point, 16 you know, and it's -- it has stabilized at this 17 point, and it's -- you can't tell from this 18 whether this was something that was placed 19 there or if that's natural.</p> <p>20 Q. In any event, since 1986, are you 21 aware of any placement of material there in 22 that area, Dam 2?</p> <p>23 A. No, sir, I am not.</p>

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<p>1 (Plaintiff's Exhibit 25 was marked 2 for identification.)</p> <p>3 Q. Let me show you what I have marked 4 as Exhibit 25. This photo was also taken on 5 June 12th, 2017. Can you tell us what is shown 6 in that photo?</p> <p>7 A. I'm not sure where this is.</p> <p>8 Q. If you compare it to Exhibit 24, 9 it might help.</p> <p>10 A. Okay. This is just a close-up of 11 up at the top, is that --</p> <p>12 Q. Yes, sir, I believe it is.</p> <p>13 A. Okay.</p> <p>14 Q. It looks like this -- the part you 15 see in the middle of 25 is the part at the top 16 of the frame in 24?</p> <p>17 A. Yes, here is here (indicating).</p> <p>18 Yes, sir, okay.</p> <p>19 Q. So still looking at that, would 20 you describe that as just an erosion of part of 21 the dam?</p> <p>22 A. Yes, sir, uh-huh.</p> <p>23 Q. Would the dam be functional in</p>	<p>1 A. I don't know. 2 (Plaintiff's Exhibit 26 was marked 3 for identification.)</p> <p>4 Q. Let me show you what I have marked 5 as Exhibit 26. This is one more view of the 6 upper dam from the top side.</p> <p>7 A. Okay.</p> <p>8 Q. Does that appear to be what it is 9 to you?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Looking at this photo, you would 12 still describe that dam as functional and not 13 breached?</p> <p>14 A. Yes, sir, that is correct.</p> <p>15 Q. You see on the left side of the 16 picture, there is some pine straw and then 17 beneath it there is some material there; does 18 that look like mine waste to you?</p> <p>19 MR. DAVIS: Object to the form, 20 foundation.</p> <p>21 A. It could be. Yes, sir, it could 22 be.</p> <p>23 (Plaintiff's Exhibit 27 was marked</p>
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<p>1 that condition?</p> <p>2 A. Absolutely could be.</p> <p>3 Q. Would it hold back sediment with 4 that --</p> <p>5 A. Oh, yes, it could. Yes. If the 6 rest of the dam and all is intact, you know, up 7 to whatever the low -- the low elevation is 8 going to be where this is eroded off. Up to 9 that point, yeah, it could still be functioning 10 as it was supposed to. The area that is down 11 below it where it flattens out here, you know, 12 this area, which is -- looks like it is all 13 part of the structure, that is all pretty 14 stable based on vegetation and everything that 15 you see growing in it.</p> <p>16 Q. Is that mine waste that you see 17 visible on the bed of that hole in the dam?</p> <p>18 MR. DAVIS: Object to the form and 19 the foundation. Go ahead and answer.</p> <p>20 A. It doesn't appear to have a color, 21 you know, of coarse refuse, so I would say no.</p> <p>22 Q. (BY MR. BROCK:) Was this area 23 where Dam 2 is capped?</p>	<p>1 for identification.)</p> <p>2 Q. (BY MR. BROCK:) All right, Mr. 3 Hicks, let me show you what I have marked as 4 Exhibit 27. This is a photo taken on June 5 12th, 2017.</p> <p>6 A. Yes, sir.</p> <p>7 Q. Do you recognize that area of the 8 mine site?</p> <p>9 A. That looks like one of those 10 earlier pictures you showed me, you know, where 11 it had some of the old coarse refuse that had 12 that bare spot. It appears it could be that 13 site.</p> <p>14 Q. The pre-law --</p> <p>15 A. Yes, sir.</p> <p>16 Q. -- area?</p> <p>17 A. Yes, sir. Pre-law, yes, sir.</p> <p>18 Q. Is that material you see there 19 capped or graded?</p> <p>20 A. No, sir, it is not.</p> <p>21 Q. Does that look to you like it 22 would pose a danger to human safety and welfare 23 there?</p>

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<p>1 MR. DAVIS: Object to the form and 2 foundation.</p> <p>3 A. No.</p> <p>4 Q. (BY MR. BROCK:) Is there a danger 5 of that material collapsing, in your view?</p> <p>6 A. No.</p> <p>7 Q. Has Drummond ever pursued any AML 8 funds for cleanup based on safety?</p> <p>9 A. No, sir.</p> <p>10 Q. I mean at Maxine.</p> <p>11 A. No, sir. I assumed you were 12 talking about Maxine.</p> <p>13 Q. Right, you were correct.</p> <p>14 Since this suit was filed in 2016, 15 has Drummond done any work on this area of the 16 uncovered GOB area --</p> <p>17 A. No, sir.</p> <p>18 Q. -- of the mine site?</p> <p>19 A. Have not.</p> <p>20 (Plaintiff's Exhibit 28 was marked 21 for identification.)</p> <p>22 Q. I show you this one, Exhibit 28; 23 this was also taken on June 12th, 2017.</p>	<p>1 A. After they had fallen down?</p> <p>2 Q. Yeah.</p> <p>3 A. Well, yeah, they help. They still 4 help stabilize the area. I mean, it would just 5 be like -- be similar to putting hay bales down 6 there. Fallen trees can serve that same 7 purpose.</p> <p>8 (Plaintiff's Exhibit 29 was marked 9 for identification.)</p> <p>10 Q. I show you what I have marked as 11 Exhibit 29; this photo was also taken on June 12 12th, 2017. Have you seen this one before?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Where did you see it?</p> <p>15 A. It would just be on the pre-law 16 area there at Maxine Mine. I couldn't tell you 17 exactly where it is, but I have seen that 18 general area.</p> <p>19 Q. Does that photo to you provide 20 visual evidence of significant erosion of the 21 coarse material?</p> <p>22 A. In the past, yes. To me, I am 23 seeing something that is largely stabilized</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. Do you recognize where that area 3 is on the mine site?</p> <p>4 A. Couldn't tell you exactly where it 5 is, but yes, I have -- I have seen this general 6 area, yes.</p> <p>7 Q. All right. Are those pine trees 8 that we see growing out of the mine waste?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do they appear to you to be 11 providing erosion control?</p> <p>12 A. Yes, they are providing some 13 erosion control. You know, they have obviously 14 been in place for quite a few years and have 15 remained in place. So that whole slope that 16 you are showing there has to be relatively 17 stable.</p> <p>18 Q. Have you walked the site and seen 19 any of these pine trees that have fallen down 20 the hill as the material has eroded away?</p> <p>21 A. Yes, sir, I have.</p> <p>22 Q. Did those trees make the site 23 stable?</p>	<p>1 now.</p> <p>2 Q. How do you know it is stabilized?</p> <p>3 A. Up to the edge of it, you know, 4 where all of the pine trees are growing, you 5 see pine straw that's under the trees. So it 6 doesn't appear that there is much in the way of 7 additional slippage. So areas like that, you 8 know, they will -- it will usually erode in 9 place and at some point it is going to start 10 rounding off and it is going to become more and 11 more stabilized over time. This has gone 12 through time, you know, to where I would say -- 13 I would consider this to be relatively stable.</p> <p>14 Q. Is there any issue to you of the 15 fact that there is basically a big cavern or 16 hole in the ground there where the material has 17 eroded away?</p> <p>18 MR. DAVIS: Object to the form and 19 foundation, argumentative question.</p> <p>20 Q. (BY MR. BROCK:) You can see that 21 with your own eyes, can't you?</p> <p>22 A. Absolutely, I can see that.</p> <p>23 Q. That's okay?</p>

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<p>1 A. I don't have a problem with this.</p> <p>2 MR. DAVIS: There is a reason it</p> <p>3 is called pre-law.</p> <p>4 Q. (BY MR. BROCK:) Does Drummond</p> <p>5 currently have any plan in place or proposal</p> <p>6 about how to stop some of the erosion from the</p> <p>7 pre-law area?</p> <p>8 A. In place, I would say no. Has it</p> <p>9 been --</p> <p>10 MR. DAVIS: Stop. Answer his</p> <p>11 question.</p> <p>12 A. The answer is no.</p> <p>13 Q. (BY MR. BROCK:) Okay. Have you</p> <p>14 discussed a plan to help stop some of this</p> <p>15 erosion?</p> <p>16 MR. DAVIS: Yes or no.</p> <p>17 A. Yes.</p> <p>18 Q. (BY MR. BROCK:) Who have you</p> <p>19 discussed it with?</p> <p>20 A. Just been discussed in-house,</p> <p>21 something that has been discussed with David</p> <p>22 Muncher.</p> <p>23 MR. DAVIS: And the lawyers.</p>	<p>1 A. I don't know. That's -- that's --</p> <p>2 I just don't know how that would --</p> <p>3 Q. How about with earth moving</p> <p>4 equipment, like trucks?</p> <p>5 MR. DAVIS: Object to the form.</p> <p>6 He is really here to testify about facts, not</p> <p>7 speculate about future events in the case,</p> <p>8 settlement strategies, et cetera.</p> <p>9 MR. BROCK: I am not asking about</p> <p>10 settlement strategy. I am asking about the</p> <p>11 current state of the mine site.</p> <p>12 MR. DAVIS: You are asking him to</p> <p>13 speculate how it can be resolved.</p> <p>14 Q. (BY MR. BROCK:) Is it Drummond's</p> <p>15 position, and I am asking you as Drummond's</p> <p>16 representative testifying today, that it would</p> <p>17 be not feasible technically to excavate or</p> <p>18 remove the waste material in the pre-law mine</p> <p>19 dump?</p> <p>20 MR. DAVIS: Object to the form.</p> <p>21 A. I would say that is an accurate</p> <p>22 statement.</p> <p>23 Q. That it is not even technically</p>
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<p>1 A. Right.</p> <p>2 MR. DAVIS: So we will stop him</p> <p>3 there.</p> <p>4 Q. (BY MR. BROCK:) All right. Could</p> <p>5 this area be graded and capped?</p> <p>6 A. It could.</p> <p>7 Q. I'm talking about the pre-law</p> <p>8 area.</p> <p>9 A. Yes, sir, it could be.</p> <p>10 Q. Would it be more expensive, in</p> <p>11 your view, to grade and cap it or to remove it?</p> <p>12 MR. DAVIS: Object to the form and</p> <p>13 foundation.</p> <p>14 A. It would be much more expensive to</p> <p>15 remove all of that.</p> <p>16 Q. (BY MR. BROCK:) What do you base</p> <p>17 that on?</p> <p>18 A. Experience.</p> <p>19 Q. How would you remove it if you</p> <p>20 were going to go about that?</p> <p>21 A. I wouldn't remove it.</p> <p>22 Q. How would one remove it if one</p> <p>23 were, for example, ordered to do so?</p>	<p>1 feasible to do it?</p> <p>2 A. That would be correct.</p> <p>3 Q. And I'm not saying that it</p> <p>4 wouldn't be expensive, I'm just talking about</p> <p>5 technically -- technical feasibility.</p> <p>6 A. I would agree with that statement.</p> <p>7 Q. Okay. Why is that?</p> <p>8 A. It would cause tremendous</p> <p>9 environmental harm.</p> <p>10 Q. Explain that.</p> <p>11 A. If all of that material was -- or</p> <p>12 if there was a portion of it that was moved,</p> <p>13 removed, then you would be starting a whole new</p> <p>14 deposition cycle. It is largely eroded in</p> <p>15 place and has become relatively stabilized. It</p> <p>16 is becoming more stabilized every year that</p> <p>17 goes by. If you come in there and disrupt</p> <p>18 that, well, then that is going to cause an</p> <p>19 oxidizing environment all over again. And --</p> <p>20 Q. If you remove it all?</p> <p>21 A. Yes. You are going to have a --</p> <p>22 you are going to have a big raw area, you know,</p> <p>23 that is going to be re-exposed out there.</p>

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<p>1 Q. Have you reviewed the expert 2 report by a guy named Gordon Johnson that 3 Riverkeeper submitted? 4 A. No. 5 Q. So I guess you haven't been asked 6 to comment on it or -- 7 A. No. 8 Q. Okay. Well, he is a professional 9 engineer that has worked on mining sites, and 10 he has offered an opinion in the case that you 11 could excavate it. So you would say Drummond's 12 position is you disagree with that? 13 A. Absolutely. 14 Q. For the reasons you have already 15 stated? 16 A. Yes, sir. 17 MR. DAVIS: And for any reasons 18 that our expert witnesses will articulate. 19 MR. BROCK: I must have missed 20 that in their opinions, but we will see. 21 (Plaintiff's Exhibit 30 was marked 22 for identification.) 23 Q. (BY MR. BROCK:) Let me show you</p>	<p>1 in front of the teepee in the picture? 2 A. Yes, sir. 3 Q. Does that look like normal 4 shoreline to you on the Locust Fork or does 5 that look like eroded mine waste? 6 MR. DAVIS: Object to the form and 7 foundation. 8 A. I can't tell. 9 Q. You can't tell if that is mine 10 waste by looking at it? 11 A. It doesn't appear to be mine waste 12 to me. 13 Q. All right. 14 MR. BROCK: For the record, this 15 photo is from August 17th of 2017. 16 (Plaintiff's Exhibit 31 was marked 17 for identification.) 18 Q. (BY MR. BROCK:) Take a look at 19 Exhibit 31. This is a little closer-up shot of 20 the shoreline there by the teepee. Same 21 question: Does that look like natural 22 shoreline to you or mine waste? 23 MR. DAVIS: Same objection. You</p>
Page 214	Page 216
<p>1 what I have marked Exhibit 30. Do you 2 recognize what is shown in that picture? 3 A. This appears to be area that is 4 going -- I take it this is -- you're saying 5 this is the Warrior River, so this would be 6 going upstream, you know, from Dam A? 7 Q. Correct. 8 A. Correct. 9 Q. Right. 10 MS. ANDREEN: Dam 1. 11 MR. BROCK: Well, A, you know, 1, 12 the lower dam. 13 MS. ANDREEN: Just want to make 14 sure. 15 A. Dam 1, excuse me. 16 Q. (BY MR. BROCK:) Have you ever 17 seen this teepee that is down there that we 18 passed a bunch of times on the river? 19 A. Yes. 20 Q. Just out of curiosity, do you know 21 who put it there or whose teepee it is? 22 A. No, sir, I don't. 23 Q. Well, you see the shoreline there</p>	<p>1 can answer. 2 A. It does not appear to be mine 3 waste to me. It's a nice chair, recliner. 4 Q. (BY MR. BROCK:) Yeah, apparently 5 somebody uses it in that teepee, I don't know. 6 Is that Drummond's property? 7 A. Yes, sir. Somebody is 8 trespassing. 9 MR. DAVIS: In case you are 10 wondering, there are only about five thousand 11 pictures. 12 MR. BROCK: Let's go off the 13 record a second. 14 (Off-the-record discussion.) 15 (Plaintiff's Exhibit 32 was marked 16 for identification.) 17 Q. (BY MR. BROCK:) I show you what I 18 have marked as Exhibit 32. This was taken on 19 August 18th, 2017 by Riverkeeper when we were 20 out there doing the joint sampling program. If 21 you will notice that striking figure in the 22 photo in the yellow shirt, that is your 23 attorney Richard --</p>

<p style="text-align: right;">Page 217</p> <p>1 MR. DAVIS: I object to this 2 photograph, it's accurate. 3 A. Oh, my. 4 Q. (BY MR. BROCK:) This was a point 5 where we did some sampling on that trip. Are 6 you familiar with this area by looking at that 7 photograph? 8 A. No, sir. 9 Q. This was -- I don't know if you 10 want to call it a stream or a gully or a ditch 11 that comes off of the east side of the pre-law 12 GOB pile. 13 A. Okay. 14 Q. Are you aware of erosion that is 15 happening on that side off the pre-law GOB 16 pile? 17 A. Well, based on a lot of the 18 pictures that you have shown me, yes, there is 19 erosion that comes off from that side. 20 Q. Okay. Since this lawsuit was 21 filed in 2016, has Drummond done anything to 22 try to control or stop that erosion of 23 sediment?</p>	<p style="text-align: right;">Page 219</p> <p>1 Q. (BY MR. BROCK:) Let me show you 2 maybe by reference to one -- where is that 3 aerial photo? 4 Look at Exhibit 22. When I am 5 saying the east side, I am talking about this 6 direction coming down the ridge off -- maybe 7 call it the back side of the pre-law? 8 A. The river side. 9 Q. Yes. 10 A. So what is your question? 11 Q. My question is, is Drummond aware 12 there is surface water discharges off of the 13 pre-law mine waste pile to the river side? 14 A. No, sir. That is -- that area is 15 all stabilized and vegetated from looking at 16 that photo there, so I see tree canopy on all 17 of that. So I don't see that there would be 18 any significant erosion that would be coming 19 off that and going to the river. 20 Q. So you don't believe that is 21 happening? 22 A. It's not happening, no. 23 Q. What is your basis for saying it</p>
<p style="text-align: right;">Page 218</p> <p>1 A. I'm not seeing active 2 sedimentation coming off of here. Just because 3 there is a erosion real channel running 4 there -- 5 Q. Right. It is in Exhibit 31, I 6 would suggest to you, but -- 7 In any event, is Drummond aware 8 that surface water coming off of the pre-law 9 refuse pile is discharging to the Locust Fork 10 on the east side? 11 A. If this is coming off the pre-law 12 area on the east side -- 13 Q. Right. 14 A. -- any water that is going to 15 travel down through here is going to go 16 downhill and it is going to make its way to Dam 17 Number 1. And when you have rainfall events 18 you are going to -- yes, you would have water 19 that would eventually make its ways down to Dam 20 Number 1, yes. 21 MR. DAVIS: He is not following 22 where you are. 23 MR. BROCK: Yeah, I know.</p>	<p style="text-align: right;">Page 220</p> <p>1 is not happening? 2 A. Well, it's because it is 3 stabilized. It has got trees growing on all of 4 it. 5 Q. Okay. You keep saying it is 6 stabilized. 7 A. Uh-huh. 8 Q. In this case, we have 9 hydrologists, engineers go out and look at the 10 site and there has been an estimate made that 11 somewhere between fifty and ninety thousand 12 cubic yards of sediment is eroding off of that 13 site annually. Have you seen those estimates? 14 A. To -- you are talking about in 15 today cycles that there's that kind of -- no, 16 that's not happening. 17 Q. And that a total of somewhere 18 between two and three million cubic yards of 19 material has eroded off of this site since it 20 was disturbed. Do you believe that is 21 accurate? 22 A. I don't -- I don't know. 23 Q. Would you dispute it?</p>

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<p>1 A. I don't know.</p> <p>2 Q. Do you know of any facts or</p> <p>3 scientific evidence to dispute it?</p> <p>4 A. I don't know.</p> <p>5 Q. If that much material has eroded</p> <p>6 off of the site, would you characterize it as</p> <p>7 stabilized?</p> <p>8 MR. DAVIS: Object to the form.</p> <p>9 He is being offered as a fact witness. That is</p> <p>10 expert testimony. He is not here --</p> <p>11 MR. BROCK: I mean, you can</p> <p>12 characterize the question any way you want to.</p> <p>13 I don't agree with you.</p> <p>14 MR. DAVIS: I can tell you the</p> <p>15 company's position is that we don't agree with</p> <p>16 much of anything your experts have said. And</p> <p>17 he is not here to agree or disagree with them,</p> <p>18 and that's why we have consultants. Just like</p> <p>19 I didn't take issue with Nelson when he</p> <p>20 deferred.</p> <p>21 Q. (BY MR. BROCK:) You can defer to</p> <p>22 your experts if you want to, but I'm asking you</p> <p>23 if you know of any factual or scientific</p>	<p>1 define tree canopy?</p> <p>2 A. Well, you can see that on all of</p> <p>3 this, you have got closed tree canopy. So you</p> <p>4 are going to have -- if you have precipitation</p> <p>5 that is coming down through there, it is going</p> <p>6 to largely be hitting tree canopy before it</p> <p>7 gets to ground. And, you know, it is just the</p> <p>8 erosion courses of raindrops, you know, that</p> <p>9 causes the biggest portion of sedimentation.</p> <p>10 And so you are going to be intercepting the</p> <p>11 majority of that. And then you have got root</p> <p>12 material, you have organic matter, duff</p> <p>13 material, say a mulch layer that is on a big</p> <p>14 portion of that that is going to arrest erosion</p> <p>15 potential from the site.</p> <p>16 Q. That is what tree canopy means?</p> <p>17 A. That is what tree canopy does.</p> <p>18 Q. What kind of trees are on the site</p> <p>19 other than pine trees?</p> <p>20 A. There's a lot of different</p> <p>21 hardwoods in addition to two or three different</p> <p>22 varieties of pine trees.</p> <p>23 Q. When were the pine trees planted?</p>
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<p>1 evidence to refute the fact that significant</p> <p>2 quantities in the numbers I have just quoted</p> <p>3 have eroded off of that site, off the waste</p> <p>4 pile?</p> <p>5 MR. DAVIS: And I will object,</p> <p>6 because he is being asked to comment on</p> <p>7 evidence that is not admitted. Go ahead.</p> <p>8 A. I don't know about the amount of</p> <p>9 material that you have mentioned, but just</p> <p>10 about everything that I am seeing in this</p> <p>11 photograph here has trees -- the vast majority</p> <p>12 of it has a tree canopy that has developed over</p> <p>13 time. In decades gone by before there would</p> <p>14 have been vegetation that would become</p> <p>15 established the way it has on there, there</p> <p>16 would have been greater erosion from it. But</p> <p>17 in today's terms, just about that whole area</p> <p>18 has vegetative tree canopy over it. And so the</p> <p>19 amount of erosion has largely been arrested and</p> <p>20 there is not that much in the way of active</p> <p>21 sedimentation that is leaving that site. That</p> <p>22 would be my opinion.</p> <p>23 Q. Okay. When you -- how do you</p>	<p>1 A. I don't know the exact date, but a</p> <p>2 lot of this would be natural re-vegetation.</p> <p>3 There would be a lot of the pine trees -- not</p> <p>4 all of them that are there would have been</p> <p>5 planted. A lot of that would come from natural</p> <p>6 regeneration.</p> <p>7 Q. What reclamation was done on the</p> <p>8 pre-law mine dump area?</p> <p>9 A. Reclamation? Other than the work</p> <p>10 that has -- that has been mentioned, you know,</p> <p>11 in the PELA workup, you know, that's -- that's</p> <p>12 the only work that I'm aware of that would</p> <p>13 possibly have been done.</p> <p>14 Q. What I am getting at, was the</p> <p>15 reclamation that was done on the post-law area</p> <p>16 different than the pre-law area?</p> <p>17 A. Yes, sir, I would say that is</p> <p>18 definitely true.</p> <p>19 Q. What was done on the post-law</p> <p>20 area?</p> <p>21 A. Well, just like that area that you</p> <p>22 are talking about capping, you know, that would</p> <p>23 be -- that was done differently. You know,</p>

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<p>1 areas where coarse refuse would have been 2 placed in that drainage area that would have 3 been post-law, you know, it would have been 4 graded out, flattened, would have been compacted, 5 you know, much more in place. It would have 6 reduced the potential of erosion off from those 7 kind of sites.</p> <p>8 Q. Let me ask again about the pre-law 9 area. What reclamation in comparison was done 10 on that area?</p> <p>11 A. That would have all predicated me, 12 so I don't know what was done on the pre-law 13 areas. There was -- I do not know of any 14 requirement for anything to have been done, so 15 I don't know if there was or not.</p> <p>16 Q. Is there anybody else at Drummond 17 that would know?</p> <p>18 A. I don't think so.</p> <p>19 Q. I asked Mr. Muncher this too, and 20 he, my recollection is, didn't know, but do you 21 know is there any insurance in place that is 22 potentially applicable to the claims in this 23 case?</p>	<p>1 responses; what do you know about that? 2 A. I don't know anything about a fish 3 kill. Never heard about a fish kill. At 4 Maxine?</p> <p>5 Q. Right.</p> <p>6 A. No.</p> <p>7 MR. BROCK: Let's take just a 8 couple of minutes.</p> <p>9 (Off-the-record discussion.)</p> <p>10 MR. BROCK: We stated the wrong 11 date of one of the photographs. Exhibit Number 12 19 was actually taken on March 6th of 2016. 13 (Whereupon, a break was had from 14 4:14 p.m. until 4:30 p.m.) 15 (Plaintiff's Exhibit 33 was marked 16 for identification.)</p> <p>17 Q. (BY MR. BROCK:) Mr. Hicks, this 18 is Exhibit 33 I have marked to your deposition. 19 And I know you didn't --</p> <p>20 A. Wow. 1976.</p> <p>21 Q. That's when it all started. So do 22 you remember seeing this document, not that you 23 would have, in the document production that</p>
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<p>1 A. I don't have any idea. I wouldn't 2 know.</p> <p>3 Q. Well, I am going to ask because 4 you are here as the corporate representative: 5 Has any claim been made against any kind of 6 insurance policy for any of the claims in this 7 case?</p> <p>8 A. No, sir, not that I am aware of.</p> <p>9 Q. Are you aware of an incident or 10 situation that happened with some wells, 11 personal water wells around the Maxine Mine I 12 think back in the '80s? Does that ring a bell 13 at all with you?</p> <p>14 A. What do you mean?</p> <p>15 Q. Like some contaminated wells from 16 mine pool drainage or anything like that?</p> <p>17 MR. DAVIS: Object to foundation.</p> <p>18 A. I don't know if -- I don't know of 19 anything that would be in the area of this 20 lawsuit that would be well complaints. No, not 21 in this -- not in this area.</p> <p>22 Q. (BY MR. BROCK:) There was a fish 23 kill mentioned in some of the interrogatory</p>	<p>1 Drummond made?</p> <p>2 A. (Reviewing document.) No, I have 3 not seen this.</p> <p>4 Q. In the first paragraph, Moyer 5 Edwards who wrote this memo said they were 6 considering, quote, the possibility of 7 reworking the refuse pile facing the river, end 8 quote.</p> <p>9 A. Uh-huh.</p> <p>10 Q. That didn't ever happen, did it?</p> <p>11 A. I don't know. It says that -- it 12 makes it sound like that they did not, that 13 they had decided that to disturb it would cause 14 additional siltation and so they proposed 15 planting grasses and trees to minimize the 16 siltation. So based on that, I would say that 17 they did not rework.</p> <p>18 Q. Okay. And this memo or letter is 19 dated May 4th, 1976; do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. In the second paragraph, he has 22 discussion there about constructing a dike, 23 says fifty to seventy-five feet from the</p>

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<p>1 river's edge; do you see that part?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And this document, among some</p> <p>4 others, has been one of the sources of our</p> <p>5 understanding or belief that those dams were</p> <p>6 constructed at some point after that, May 4th</p> <p>7 of 1976. Do you have any conflicting or</p> <p>8 different information?</p> <p>9 A. I don't have any information that</p> <p>10 would be one way or the other, no. What dike</p> <p>11 are they talking about, do you know?</p> <p>12 Q. I assume -- from my reading of it,</p> <p>13 they are talking about the one we have been</p> <p>14 looking at the pictures of, the Dam Number 1.</p> <p>15 A. Dam 1? Okay.</p> <p>16 Q. And also in that paragraph, he</p> <p>17 says at the toe of the refuse pile, we plan to</p> <p>18 erect a small dam from which will be the</p> <p>19 starting point for disposal of additional mine</p> <p>20 refuse. I read that as talking about what we</p> <p>21 have been looking at as the upstream or Dam</p> <p>22 Number 2.</p> <p>23 A. Okay.</p>	<p>1 4th, 1976; do you see that part?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. The prior exhibit that I</p> <p>4 showed you, 33, is a letter to Bob Smith.</p> <p>5 A. Yes, sir.</p> <p>6 Q. So it appears he is talking about</p> <p>7 the installation of the dams is my reading of</p> <p>8 it --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- do you have any different</p> <p>11 information than that?</p> <p>12 A. No, sir.</p> <p>13 Q. He also notes in item one there,</p> <p>14 quote, considerable siltation to the Locust</p> <p>15 Fork from the western portion of the waste rock</p> <p>16 pile. Do you know if that's true or not as of</p> <p>17 what was happening out there in 1976?</p> <p>18 A. Wait now, what -- say that --</p> <p>19 Q. Item number one.</p> <p>20 A. (Reviewing document.) Okay.</p> <p>21 Q. He is talking about considerable</p> <p>22 siltation to the Locust Fork from the waste</p> <p>23 rock pile.</p>
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<p>1 Q. Do you have any different</p> <p>2 information or understanding of that?</p> <p>3 A. No, sir.</p> <p>4 Q. Do you have any information that</p> <p>5 the dams were built before 1972?</p> <p>6 A. This says '76. Is that what you</p> <p>7 are talking about or are you asking '72?</p> <p>8 MR. DAVIS: He said '72.</p> <p>9 (BY MR. BROCK:) I am asking about</p> <p>10 '72.</p> <p>11 A. Oh. I don't know. I have no</p> <p>12 information one way or the other.</p> <p>13 (Plaintiff's Exhibit 34 was marked</p> <p>14 for identification.)</p> <p>15 Q. All right. I am handing you what</p> <p>16 I have marked Exhibit 34. This is another</p> <p>17 letter from Moyer Edwards to AWIC from 1976.</p> <p>18 Do you see in the middle of the page it has the</p> <p>19 heading Maxine Mine?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And below that it says estimated</p> <p>22 October of 1976 for completion of the program</p> <p>23 as outlined in our letter to Bob Smith of May</p>	<p>1 MR. DAVIS: Will you -- will you</p> <p>2 read the question --</p> <p>3 (BY MR. BROCK:) Yeah, my question</p> <p>4 is do you know if that is an accurate</p> <p>5 description of the situation there in 1976?</p> <p>6 A. No, sir, I have no way of knowing.</p> <p>7 Q. You don't know if it was or</p> <p>8 wasn't?</p> <p>9 A. Well, based on what is here and</p> <p>10 what you just said, I'm not sure of what area</p> <p>11 you are talking about, about where it is in the</p> <p>12 western portion of the waste rock pile.</p> <p>13 (Plaintiff's Exhibit 35 was marked</p> <p>14 for identification.)</p> <p>15 Q. Let's go to the next one here,</p> <p>16 Exhibit 35. This is another letter from Mr.</p> <p>17 Edwards to AWIC. If you would, take a look at</p> <p>18 the first paragraph.</p> <p>19 A. (Reviewing document.) First</p> <p>20 paragraph?</p> <p>21 Q. Right. He is talking about the</p> <p>22 installation of a drainpipe.</p> <p>23 A. Yes, sir.</p>

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<p>1 Q. Are there still pipes on the site 2 that are used to channel runoff from the waste 3 pile?</p> <p>4 A. Sir, I don't -- I don't think so.</p> <p>5 The only pipe that I have seen in any of that 6 area would have been a pipe that would have 7 been mentioned in -- as part of the PELA 8 report. It would be a cross drain that would 9 actually route water, you know, from one area 10 across some of the refuse to actually going 11 from like a portion on the east side to the 12 west side and keep it from coming in contact 13 with refuse that would be in the middle. 14 That's the only pipe, you know, that I have 15 seen out there, and it's -- you know, it's not 16 functional. But I don't know of any other pipe 17 anywhere, no.</p> <p>18 Q. Buried or on the surface?</p> <p>19 A. No.</p> <p>20 (Plaintiff's Exhibit 36 was marked 21 for identification.)</p> <p>22 Q. All right. I show you what I have 23 marked as Exhibit 36. This is a memo from Jack</p>	<p>1 A. Yes, sir, uh-huh.</p> <p>2 Q. That's another term we haven't 3 seen before, spoil area. Would that be another 4 way of referring to the refuse pile?</p> <p>5 A. I would think they would be 6 referring to coarse refuse when they would say 7 that.</p> <p>8 Q. And he says there that the active 9 spoil area has, quote, no runoff control 10 whatsoever. Do you know if that was a true 11 statement as of December 12th, 1978?</p> <p>12 A. No, sir, I would have no idea.</p> <p>13 Q. Does the pre-law spoil area have 14 any runoff control in place now?</p> <p>15 A. I'm sorry?</p> <p>16 Q. Does the pre-law spoil area or 17 waste area have any runoff control in place?</p> <p>18 A. No, sir.</p> <p>19 Q. Has it ever, to your knowledge?</p> <p>20 A. Well, it has what I was talking 21 about a while ago as an excellent tree canopy, 22 so, yes, that does suffice. But earlier on, I 23 wouldn't have any idea other than I know there</p>
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<p>1 McDuff. Was he an engineer?</p> <p>2 A. Yes, sir.</p> <p>3 Q. If I asked you earlier, I 4 apologize. Does he work for Drummond?</p> <p>5 A. No, sir.</p> <p>6 Q. Has he retired or --</p> <p>7 A. Yes. He worked at ABC and -- he 8 was involved in a serious accident. He did 9 come back to work for a while, so he was still 10 with -- he was still with the underground 11 mining division of -- after it became Drummond 12 for some period of time. But he hasn't worked 13 at Drummond/ABC in twenty plus years.</p> <p>14 Q. Okay. In this memo to -- Mr. Sam 15 Gilbert, do you know who that is?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Who is he?</p> <p>18 A. He was -- I knew him more as -- at 19 this time, I don't know where he was or what he 20 was, but I knew him as a mine superintendent.</p> <p>21 Q. All right. If you turn to the 22 second page of this document, Section D 23 captioned active spoil area -- do you see that?</p>	<p>1 was not -- there was not always trees on this 2 area.</p> <p>3 Q. In the last paragraph on the 4 document, he says that old spoil areas are 5 severely eroded. Do you dispute that?</p> <p>6 A. At that time I would have -- I 7 would have no way to accept or reject, you 8 know, that statement, no. So I -- no, I 9 couldn't dispute it, no, sir.</p> <p>10 Q. Is the pre-law area severely 11 eroded now?</p> <p>12 MR. DAVIS: Object to the form.</p> <p>13 A. It was severely eroded in the 14 past, yes.</p> <p>15 Q. (BY MR. BROCK:) Did it get better 16 at some point?</p> <p>17 A. It's much better now. I have said 18 that repeatedly today. The site today out 19 there, because of vegetative cover and because 20 everything has settled in place, it is totally 21 different now than what it was when they would 22 have been talking about this back in the '70s.</p> <p>23 Q. And the last sentence there, he</p>

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<p>1 says that the badly eroded areas should be 2 regraded and a vegetative cover established. 3 Was that ever done on the pre-law area? 4 A. I'm sorry, but I have no idea. 5 Q. Do you see any evidence today as 6 you look at it that it was regraded and 7 re-vegetated? I am talking about the pre-law 8 waste area. 9 A. Most of it has good vegetation on 10 it. How much of that was planted versus it 11 being natural, I don't know. But the site -- 12 I'm just saying that the site as it is today is 13 totally different than it was -- it would have 14 been back in the 1970s. 15 Q. Were you ever there in the '70s? 16 A. No, sir. 17 Q. What number was that last one? 18 A. That was 36. 19 (Plaintiff's Exhibit 37 was marked 20 for identification.) 21 Q. I show you what I have marked as 22 Exhibit 37. This is a Notice of Violation from 23 the Surface Mining Commission. Have you looked</p>	<p>1 A. Yes, sir. 2 Q. Can you read what it says? 3 A. Yes, sir. 4 Q. All right. Read it for us. 5 A. Discharge from the disturbed areas 6 not within effluent limits. 7 Q. What were the effluent limits? 8 A. They -- in 1979, they would have 9 largely be very little different than what they 10 are today, so it doesn't say what they -- what 11 are not within effluent limits. So, you know, 12 it could be pH or could be iron or it could be 13 manganese. 14 Q. Do you know if there was a 15 discharge permit in place at that time in '79? 16 MR. DAVIS: Do you know? 17 A. No. 18 Q. (BY MR. BROCK:) All right. Yeah, 19 you mentioned iron, pH and manganese. If you 20 look down further on the remedial action 21 section, that is exactly what they were asking 22 them to address; do you see that part? 23 A. Yes, sir.</p>
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<p>1 at the Notices of Violation in the Drummond 2 production at all? 3 A. No, sir. 4 Q. This one relates to a violation 5 that occurred in 1979. 6 A. This would have been during the 7 interim program. 8 Q. What do you mean by that? 9 A. It would have been -- the Surface 10 Mining Control and Reclamation Act was divided 11 in -- until the states gained primacy over the 12 program, they operated as the interim program. 13 So the mining -- or the regulatory program 14 would have been under the '75 Alabama Surface 15 Mining Act plus two or three provisions that 16 would have been under Public Law 9587 which is 17 the Surface Mining Control and Reclamation Act 18 from the federal standpoint. 19 Q. All right. On the second page you 20 are looking at now -- 21 A. Yes, sir. 22 Q. -- you see where it says nature of 23 the violations?</p>	<p>1 Q. Okay. Does Drummond deny that 2 they were having issues with iron and manganese 3 and pH on the site in 1979? 4 MR. DAVIS: Object to the form and 5 foundation. 6 A. I have no idea. 7 Q. (BY MR. BROCK:) I just want to 8 know if you are going to testify at some point 9 that that wasn't happening back in '79; that is 10 why I am asking you. And I am asking you do 11 you have any basis to know that that is not 12 correct, what the document says? 13 A. No, I have -- I don't have any 14 information that that -- that would tell me 15 that's not correct. 16 (Plaintiff's Exhibit 38 was marked 17 for identification.) 18 Q. All right. Take a look at Exhibit 19 38, and this relates to that Notice of 20 Violation that we were just looking at. 21 A. (Reviewing document.) 22 Q. And it references in the comments 23 presently treating water manually; do you know</p>

<p style="text-align: right;">Page 241</p> <p>1 what that means in that context?</p> <p>2 A. For this specifically, no. I</p> <p>3 mean, I know what manual treatment is, but I</p> <p>4 don't know -- I mean, it could be several</p> <p>5 different things. So I don't know what this</p> <p>6 would mean, no, sir.</p> <p>7 Q. What does manually mean, manual</p> <p>8 treatment?</p> <p>9 A. You are asking just generally what</p> <p>10 that would mean? Well, it would mean the</p> <p>11 addition of some type of treatment material</p> <p>12 usually to increase pH and to reduce iron and</p> <p>13 manganese levels. And you do that by the</p> <p>14 addition of an alkaline material. You know, it</p> <p>15 would get the pH in compliance. When you raise</p> <p>16 the pH, then you precipitate iron and</p> <p>17 manganese.</p> <p>18 Q. All right. Also says in this</p> <p>19 report that ABC has called in a consultant to</p> <p>20 investigate; do you know who that would have</p> <p>21 been?</p> <p>22 A. No, sir, I do not.</p> <p>23 Q. Do you know if it was PELA?</p>	<p style="text-align: right;">Page 243</p> <p>1 know, at the mine entrance usually, you know,</p> <p>2 and they normally would put the mine name and</p> <p>3 the start date on it. So I have seen a picture</p> <p>4 that says Maxine Mine 1953. So I would say</p> <p>5 that that was when it was under construction,</p> <p>6 yes, sir.</p> <p>7 Q. Okay, good. In the third</p> <p>8 paragraph down -- this letter, incidentally, is</p> <p>9 dated August 6 of 1979, it was written by</p> <p>10 Philip LaMoreaux; do you know him or did you</p> <p>11 know him?</p> <p>12 A. I met Mr. LaMoreaux on one</p> <p>13 occasion and know him as the founder of P.E.</p> <p>14 LaMoreaux, yes, sir.</p> <p>15 Q. Okay. Did you work with him on</p> <p>16 any projects?</p> <p>17 A. No, sir.</p> <p>18 Q. Okay. In that third paragraph</p> <p>19 after their first inspection, he makes some</p> <p>20 comments about the waste pile which he calls</p> <p>21 unconsolidated rubble; do you see that</p> <p>22 language?</p> <p>23 A. (Reviewing document.) Okay.</p>
<p style="text-align: right;">Page 242</p> <p>1 A. I don't. I don't know.</p> <p>2 (Plaintiff's Exhibit 39 was marked</p> <p>3 for identification.)</p> <p>4 Q. Let me show you Exhibit 39. This</p> <p>5 is the first -- or one of the first appearances</p> <p>6 in the documents of PELA, August 6, 1979, which</p> <p>7 is shortly after the previous document we were</p> <p>8 looking at, which would seem to indicate that</p> <p>9 was the consultant that was hired. Do you know</p> <p>10 if that's accurate or not?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. In this document, they</p> <p>13 describe a mine -- a visit to the mine site; do</p> <p>14 you see that part in the first paragraph?</p> <p>15 A. Yes, sir.</p> <p>16 Q. They state in here that the mine</p> <p>17 was started in 1953; do you know if that's</p> <p>18 accurate?</p> <p>19 A. I have seen a -- I have seen a</p> <p>20 picture of -- it would be like most of the</p> <p>21 time, especially for underground mines, you</p> <p>22 know, whenever there is a start-up, well, then</p> <p>23 they put up like a monument somewhere, you</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. And he says that the rubble or</p> <p>2 waste is acting as a catchment area. Do you</p> <p>3 know what that means?</p> <p>4 A. Yes.</p> <p>5 Q. What does that mean?</p> <p>6 A. Well, the rubble that he would be</p> <p>7 talking about is going to be coarse refuse.</p> <p>8 Q. Right.</p> <p>9 A. And acting as a catchment area</p> <p>10 within -- that's going to mean coarse refuse</p> <p>11 has been placed on a site and it's not -- it's</p> <p>12 not going to have had anything done to it</p> <p>13 that's going to impede water infiltration into</p> <p>14 it. So water infiltrating into it and so it</p> <p>15 would catch water. So the catchment is</p> <p>16 catching of the water and storing it in that</p> <p>17 pile.</p> <p>18 Q. Right. And do you agree or</p> <p>19 disagree with that observation about the waste</p> <p>20 pile?</p> <p>21 A. I don't either agree or disagree.</p> <p>22 I was never there so I don't know.</p> <p>23 Q. Well, is the mine pile acting as a</p>

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<p>1 catchment for water today?</p> <p>2 MR. DAVIS: Object to the form and</p> <p>3 foundation.</p> <p>4 A. You are going to have a certain</p> <p>5 amount of water that is going to still</p> <p>6 infiltrate into material. So, yes, to some</p> <p>7 degree, it could still be considered as a</p> <p>8 catchment area. Anything that's not totally</p> <p>9 impervious could be considered as a catchment</p> <p>10 area.</p> <p>11 Q. (BY MR. BROCK:) Okay. And then a</p> <p>12 little further down in that paragraph, Mr.</p> <p>13 LaMoreaux says that water moves from the rock</p> <p>14 waste disposal area both as surface water and</p> <p>15 underground component of flow; do you see that</p> <p>16 part?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you agree with that or disagree</p> <p>19 with that?</p> <p>20 MR. DAVIS: Object to the form and</p> <p>21 foundation. You can answer.</p> <p>22 A. I would have no reason to disagree</p> <p>23 with it.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. All right. Does Drummond agree or</p> <p>3 disagree that there was an acid mine problem at</p> <p>4 that time?</p> <p>5 A. I have no idea. I wasn't there.</p> <p>6 Q. He also says that the problem is</p> <p>7 more involved than just surface water runoff;</p> <p>8 he's talking about groundwater there, I</p> <p>9 believe. Does Drummond deny that groundwater</p> <p>10 is discharging to the Locust Fork from the</p> <p>11 Maxine Mine site that is contaminated with mine</p> <p>12 waste?</p> <p>13 MR. DAVIS: Object to the form,</p> <p>14 foundation.</p> <p>15 A. I see no indication that</p> <p>16 groundwater is moving to the river.</p> <p>17 Q. (BY MR. BROCK:) What do you base</p> <p>18 that on?</p> <p>19 A. Everything that I see down there</p> <p>20 is more related to the surface.</p> <p>21 Q. Have you looked for seeps along</p> <p>22 the bank --</p> <p>23 A. No.</p>
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<p>1 Q. (BY MR. BROCK:) And a little bit</p> <p>2 further down in that paragraph, Mr. LaMoreaux</p> <p>3 says that the area in violation is a tributary</p> <p>4 to the Locust Fork. Do you agree with him</p> <p>5 about that or disagree?</p> <p>6 A. I would disagree.</p> <p>7 Q. And he says it has been filled in</p> <p>8 part with a disposal material; would you agree</p> <p>9 or disagree with that?</p> <p>10 A. Since I wasn't there, I should say</p> <p>11 that I could neither agree or disagree with</p> <p>12 him.</p> <p>13 (Plaintiff's Exhibit 40 was marked</p> <p>14 for identification.)</p> <p>15 Q. Let me show you what I have marked</p> <p>16 as Exhibit 40 to the deposition. This is a</p> <p>17 letter from Mr. D. R. Cook; is that Doug Cook?</p> <p>18 A. Yes, sir.</p> <p>19 Q. He is writing to the Surface</p> <p>20 Mining Reclamation Commission in 1979, and you</p> <p>21 see about midway through the first paragraph he</p> <p>22 refers to the acid water problem existing at</p> <p>23 the mine; do you see that language?</p>	<p>1 Q. -- groundwater seeps?</p> <p>2 A. No.</p> <p>3 Q. Do you know if they exist or not?</p> <p>4 A. No.</p> <p>5 (Plaintiff's Exhibit 41 was marked</p> <p>6 for identification.)</p> <p>7 Q. All right. Take a look at Exhibit</p> <p>8 41.</p> <p>9 MR. BROCK: And for purposes of</p> <p>10 moving this along, on the second page, this is</p> <p>11 another LaMoreaux written document that talks</p> <p>12 about the accumulation of water in the pile.</p> <p>13 And rather than asking you any questions, I</p> <p>14 will just ask you to confirm that this is a</p> <p>15 Drummond document that you all produced in the</p> <p>16 case pursuant to our stipulation about these</p> <p>17 documents, Richard.</p> <p>18 MR. DAVIS: Well, it is an ABC</p> <p>19 document that was produced by Drummond in the</p> <p>20 case. I think we can say that.</p> <p>21 A. (Reviewing document.)</p> <p>22 Q. (BY MR. BROCK:) Turn to the</p> <p>23 second page, 832.</p>

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1 A. Okay.	1 A. (Reviewing document.)
2 Q. Can you read the first sentence --	2 Q. It says in the first paragraph, it
3 you don't have to read it out loud -- in	3 relates to treatment of acid waters at the
4 paragraph two?	4 mine; do you see that part?
5 A. Number one is what you are talking	5 A. Yes, sir.
6 about?	6 Q. If you would, go down to the
7 Q. Paragraph two, numbered two.	7 fourth paragraph.
8 A. Number two?	8 A. Okay.
9 Q. Yes, sir.	9 Q. And it says that ABC is going to
10 A. Do you want me to read it out	10 place crushed limestone upstream on one of the
11 loud?	11 dikes; do you know if that ever took place?
12 Q. No, just read it to yourself.	12 A. No, sir, I do not know.
13 A. Okay.	13 Q. And then they say as a second
14 Q. It's about storage and movement of	14 phase that they would obtain flue dust,
15 groundwater.	15 f-l-u-e, or rock dust and spray the pond areas;
16 A. (Reviewing document.) Okay. I	16 do you know if that was ever implemented?
17 have read number two.	17 A. No, sir, I do not know.
18 Q. Okay. Do you have any reason to	18 Q. On the second page of that
19 doubt the accuracy of that statement by	19 document, item number one, they are going
20 LaMoreaux?	20 through a list of possible ways to try to deal
21 A. I don't agree with it, if that's	21 with what they call the acid water problem, and
22 what you mean.	22 in item number one they talk about discharging
23 Q. Okay. On what basis?	23 into a sealed section of the mine. Do you know
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1 A. What he is calling groundwater I	1 if anything like that ever happened?
2 don't consider to be groundwater.	2 A. I don't -- I do not know, no, sir.
3 Q. What would you consider it to be?	3 Q. Would you look at that list of
4 A. He is -- he has described water	4 five items and tell me do you know if any of
5 that is being stored in -- coarse refuse that	5 those were ever implemented on the site?
6 had been put on the surface there as being	6 A. (Reviewing document.) No, sir, I
7 groundwater. Groundwater, to me, is only if it	7 do not know.
8 is in the natural material. And he is talking	8 (Plaintiff's Exhibit 43 was marked
9 about water that is stored in coarse refuse	9 for identification.)
10 that has been put there. So that does not meet	10 Q. I have handed you what I have
11 the definition of groundwater, in my	11 marked as Exhibit 43. This is a memo dated
12 estimation.	12 March 25th, 1980 written by a James Brown; do
13 Q. Do you know if PELA took	13 you know who he is?
14 groundwater samples on the site in the '80s?	14 A. Yes, sir, I -- yes. I know --
15 A. No, sir, I do not know.	15 knew -- I don't know if James Brown is still
16 Q. You haven't looked at any of that	16 living or not, but, yes, I knew him.
17 data?	17 Q. What was his job?
18 A. No.	18 A. I knew him as a mine
19 (Plaintiff's Exhibit 42 was marked	19 superintendent.
20 for identification.)	20 Q. All right. In item one there, he
21 Q. All right. Please take a look at	21 reports that Mr. Edwards said that the lime
22 that one, Exhibit 42. This is from March 6,	22 rock we saw mentioned in the prior memo was
23 1980, from the Drummond production.	23 placed with no improvement of the pH. Do you

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<p>1 have any basis to dispute that?</p> <p>2 A. No, sir.</p> <p>3 (Plaintiff's Exhibit 44 was marked</p> <p>4 for identification.)</p> <p>5 Q. Take a look at Exhibit 44. This</p> <p>6 is a letter from Moyer Edwards dated June 9th,</p> <p>7 1980 from the Drummond production.</p> <p>8 A. (Reviewing document.)</p> <p>9 Q. In the third paragraph, he talks</p> <p>10 about a treatment system that would be similar</p> <p>11 to one installed at -- is it Chetopa Mine?</p> <p>12 A. Chetopa, yes, sir.</p> <p>13 Q. Do you know what that treatment</p> <p>14 system was?</p> <p>15 A. Yes, sir, I am familiar with the</p> <p>16 treatment system that was at Chetopa.</p> <p>17 Q. What was it?</p> <p>18 A. It was a semi-automated lime</p> <p>19 treatment plant. It was initially set up to</p> <p>20 use burned lime and flake it onsite, hydrate it</p> <p>21 onsite, and then mix that with acidic water</p> <p>22 that would flow through and increase the pH.</p> <p>23 So I am familiar with that system.</p>	<p>1 of the mines? Yes. Yes, that is proven</p> <p>2 technology that has been used quite a bit.</p> <p>3 (Plaintiff's Exhibit 45 was marked</p> <p>4 for identification.)</p> <p>5 Q. Okay. I handed another exhibit to</p> <p>6 you. This is Number 45, it is a memo dated</p> <p>7 July 9th, 1980. And on the front page it</p> <p>8 indicates problem number three is low pH, iron</p> <p>9 and magnesium, do you see that -- manganese?</p> <p>10 A. Yes, sir.</p> <p>11 Q. If you turn the page over, it has</p> <p>12 some capital cost figures. Have you ever seen</p> <p>13 this before?</p> <p>14 A. No, sir.</p> <p>15 Q. Do you know who put this together?</p> <p>16 A. No, sir.</p> <p>17 Q. Can you tell by looking at this is</p> <p>18 this a proposal that would involve -- that's</p> <p>19 referred to as active treatment?</p> <p>20 A. (Reviewing document.)</p> <p>21 Q. Are you familiar with that term?</p> <p>22 A. Active treatment?</p> <p>23 Q. Right. Like mechanized or the</p>
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<p>1 Q. To your knowledge, was anything</p> <p>2 like that implemented at Maxine?</p> <p>3 A. You know, that is typically a</p> <p>4 cost-intensive piece of equipment custom-made</p> <p>5 to sites, so usually set up for --</p> <p>6 Q. Richard wants you to say yes or</p> <p>7 no.</p> <p>8 MR. DAVIS: Yes or no. Was it at</p> <p>9 Maxine or not?</p> <p>10 A. What I was going to say is I never</p> <p>11 saw anything like that at Maxine.</p> <p>12 Q. (BY MR. BROCK:) Okay. And again</p> <p>13 they mention waters from the system being</p> <p>14 pumped into an abandoned portion of the mine;</p> <p>15 did that ever happen?</p> <p>16 A. I have no idea.</p> <p>17 Q. I mean, you never heard of that</p> <p>18 happening, anyway?</p> <p>19 A. No, sir.</p> <p>20 Q. Has that been done at any other</p> <p>21 mine site that you worked at?</p> <p>22 A. Injecting material from an</p> <p>23 underground mine into sealed or abandoned areas</p>	<p>1 chemical treatment of mine waste as opposed to</p> <p>2 passive?</p> <p>3 A. Well, I'm familiar with the terms.</p> <p>4 I have no way of knowing if any of this was</p> <p>5 done or not done.</p> <p>6 Q. To your knowledge, was there ever</p> <p>7 any system installed, electricity pumps and</p> <p>8 motors out there to treat mine waste?</p> <p>9 A. I'm sorry, I do not know.</p> <p>10 (Plaintiff's Exhibit 46 was marked</p> <p>11 for identification.)</p> <p>12 Q. All right. I show you Exhibit 46.</p> <p>13 A. (Reviewing document.)</p> <p>14 Q. It is a report called Project</p> <p>15 Synopsis from PELA. Did you review this in</p> <p>16 connection with your review of the documents</p> <p>17 that were produced?</p> <p>18 A. No, sir. I haven't seen this.</p> <p>19 Q. On the third page in, they have</p> <p>20 some water quality analyses; have you looked at</p> <p>21 this data before?</p> <p>22 A. No, sir.</p> <p>23 Q. Looks like this was done in 1979</p>

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<p>1 and 1980. I think you said earlier you haven't 2 ever spoken to Ms. George at PELA about this 3 work, is that correct?</p> <p>4 A. Did Lois Dildine become Lois 5 George?</p> <p>6 Q. I think so.</p> <p>7 A. Okay. You asked if I had spoken 8 to her pertaining to what they did there?</p> <p>9 Q. Uh-huh.</p> <p>10 A. No, I have not.</p> <p>11 Q. Okay. In item eight there, she 12 says the drainage area for the system is a 13 hundred and eighty acres. Do you know what she 14 is referring to there?</p> <p>15 A. No. I could not say one way or 16 the other.</p> <p>17 Q. In item six they have offered 18 there some volume metric calculations of what 19 they call the valley fill material.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you have any information about 22 whether that information is correct or not as 23 of 1980?</p>	<p>1 Q. Did the ponds that are out there 2 behind the dams need to be excavated out 3 periodically to function properly?</p> <p>4 MR. DAVIS: Object to the form and 5 foundation.</p> <p>6 A. Do you want me to answer that, 7 sir?</p> <p>8 MR. DAVIS: You can answer subject 9 to the objection.</p> <p>10 A. Yeah, that's all very site- 11 specific. As I had mentioned earlier, you 12 know, that area -- if that was an actively 13 eroding site, then that would potentially still 14 be a problem. But I do not consider that as an 15 actively eroding site today. So you don't have 16 the problem today of what Mr. LaMoreaux would 17 have been discussing in 1979.</p> <p>18 (Plaintiff's Exhibit 48 was marked 19 for identification.)</p> <p>20 A. (Reviewing document.)</p> <p>21 Q. Have you had a chance to review 22 it?</p> <p>23 A. Started.</p>
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<p>1 A. No, sir.</p> <p>2 Q. Or how it was calculated?</p> <p>3 A. No, sir.</p> <p>4 (Plaintiff's Exhibit 47 was marked 5 for identification.)</p> <p>6 Q. Okay. I handed you what has been 7 marked Exhibit 47; it is a PELA document from 8 December 30th, 1980. If you look at the fourth 9 paragraph down where Mr. LaMoreaux who wrote 10 this says that the upper pond in the valley 11 fill is, quote, silted in up to the level of 12 the spillway of the dam; do you see that part?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Have you ever seen that pond where 15 it's that full of material?</p> <p>16 A. I would say that it's probably in 17 that range now.</p> <p>18 Q. He says that the fact that that 19 pond is full almost up to the spillway will 20 eliminate the retention time in the pond; do 21 you agree with that?</p> <p>22 A. I cannot dispute that one way or 23 the other, dispute or agree either way.</p>	<p>1 Q. It has some drawings attached that 2 are sketches that you can look at if you need 3 to, but all of my questions are going to be 4 about the first page.</p> <p>5 Item number one there, would you 6 read that to yourself?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you know if that action was 9 ever implemented?</p> <p>10 A. No, sir, I do not.</p> <p>11 Q. Do you see any evidence about a 12 six-foot notch in any of the dams?</p> <p>13 A. No, sir.</p> <p>14 Q. In item number four, do you know 15 if that trench they are discussing was ever 16 implemented or installed?</p> <p>17 A. No, sir, I do not know. Is that 18 it on that?</p> <p>19 Q. Yes, sir.</p> <p>20 (Plaintiff's Exhibit 49 was marked 21 for identification.)</p> <p>22 Q. On Exhibit 49 now. This is a memo 23 from Mr. Edwards in 1981. Subject matter of</p>

<p style="text-align: right;">Page 261</p> <p>1 this memo appears to be trying to find 2 somewhere else on the site to locate the mine 3 dumping activity. Are you familiar with this 4 subject matter?</p> <p>5 A. No, sir.</p> <p>6 Q. Were you involved in any way with 7 trying to relocate or find another area on the 8 mine site?</p> <p>9 A. No, sir.</p> <p>10 Q. Who is Mr. Napier?</p> <p>11 A. He was an inspector from ADEM, 12 AWIC at the time. I dealt with him at some of 13 our mine sites. So Alex Napier, I knew him.</p> <p>14 Q. Okay. This document in the case, 15 he was questioning if ABC should stop dumping 16 the rock in that area; do you have any 17 information about whether that is accurate or 18 not?</p> <p>19 A. No, sir, I have no idea.</p> <p>20 Q. Due to siltation, he says.</p> <p>21 A. I have no information at all.</p> <p>22 (Plaintiff's Exhibit 50 was marked 23 for identification.)</p>	<p style="text-align: right;">Page 263</p> <p>1 document, the Notice of Violation, it cites no 2 sediment control off of the active rock dump; 3 was that true in 1982?</p> <p>4 A. I'm sorry, I have no idea. 5 (Plaintiff's Exhibit 52 was marked 6 for identification.)</p> <p>7 Q. I hand you Exhibit 52; this is 8 another Notice of Violation from March of '82. 9 If you would turn to the second page, the 10 violation is failure to route drainage through 11 a sediment control device. What does a 12 sediment control device mean in that context?</p> <p>13 A. It's normally going to be a 14 sediment pond.</p> <p>15 Q. Do you know if this is accurate, 16 that there was no sediment pond or control 17 device there in '82?</p> <p>18 A. I have no idea. 19 (Plaintiff's Exhibit 53 was marked 20 for identification.)</p> <p>21 A. (Reviewing document.)</p> <p>22 Q. All right, Mr. Hicks, have you had 23 a chance to take a look at Exhibit 53?</p>
<p style="text-align: right;">Page 262</p> <p>1 Q. Do you have 50 in front of you?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. In this document, they 4 speak about pollution abatement work pursuant 5 to a plan approved in August of '81; do you 6 know what the plan consisted of?</p> <p>7 A. No, sir. That would have been on 8 my birthday, August 25th.</p> <p>9 (Plaintiff's Exhibit 51 was marked 10 for identification.)</p> <p>11 Q. This one I mainly just want to put 12 in the record, Exhibit 51. This is a Notice of 13 Violation from 1982 from Drummond's production. 14 Did you do any work, to your knowledge, that 15 was related to this Notice of Violation?</p> <p>16 A. This is all ABC, so, no, sir.</p> <p>17 Q. But this is getting pretty close, 18 I think, to when you said you were on the site. 19 You said '84, right?</p> <p>20 A. '84 -- late '84 or into '85 would 21 have been the first time that I would have been 22 there, you know, looking at that contract work. 23 Q. On the second page of this</p>	<p style="text-align: right;">Page 264</p> <p>1 A. Yes, sir.</p> <p>2 Q. This appears to be some sampling 3 results that were done on the site by the 4 Surface Mining Commission. Have you ever seen 5 this data on page 630?</p> <p>6 A. No, sir.</p> <p>7 Q. On the first page, it says Station 8 F; do you see that part?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And it talks about an unnamed 11 stream that has been diverted around the 12 sediment basins; do you know what that is 13 referring to?</p> <p>14 A. No, sir.</p> <p>15 Q. Do you know if there was a stream 16 on the site that was diverted, has anybody ever 17 told you that or shown you something like that?</p> <p>18 A. No, sir.</p> <p>19 (Plaintiff's Exhibit 54 was marked 20 for identification.)</p> <p>21 Q. Okay. I am handing you Exhibit 22 54; it is a memo from Moyer Edwards. If you 23 would take a second to look at that.</p>

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<p>1 A. (Reviewing document.)</p> <p>2 Q. It is from July of 1982; have you</p> <p>3 seen this document before?</p> <p>4 A. No, sir.</p> <p>5 Q. In the second paragraph there, he</p> <p>6 is talking about a request from regulators to</p> <p>7 try to improve water quality in an unnamed</p> <p>8 tributary; do you see that part?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And he says they were going to use</p> <p>11 sodium hydroxide; how is sodium hydroxide used</p> <p>12 in that application?</p> <p>13 A. Sodium hydroxide is a liquid</p> <p>14 chemical, highly alkaline in nature, that is --</p> <p>15 can be used to treat acidity -- to treat acid</p> <p>16 mine drainage. It could be used much like, you</p> <p>17 know, what you would use lime material for.</p> <p>18 Q. In the middle of the first</p> <p>19 paragraph, there is a sentence that says it was</p> <p>20 not until later; do you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And he says that it was determined</p> <p>23 to attempt to, quote, extract silt --</p>	<p>1 A. Right, uh-huh.</p> <p>2 Q. Okay. Do you have any personal</p> <p>3 information one way or the other about whether</p> <p>4 there is mine waste on the bottom of the river</p> <p>5 adjacent to the site?</p> <p>6 A. No, sir, I have no idea. No way</p> <p>7 of knowing.</p> <p>8 MR. DAVIS: You want to finish</p> <p>9 today, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. (BY MR. BROCK:) We are almost</p> <p>12 finished, I promise.</p> <p>13 A. Did you think you were trying to</p> <p>14 get me off the hook by not finishing?</p> <p>15 MR. DAVIS: No, I was asking a</p> <p>16 straight-up question and you gave the</p> <p>17 straight-up answer I was looking for.</p> <p>18 (Plaintiff's Exhibit 55 was marked</p> <p>19 for identification.)</p> <p>20 Q. (BY MR. BROCK:) I have handed you</p> <p>21 Exhibit 55 from the Drummond production, and it</p> <p>22 says it is a supplement to the permit</p> <p>23 application from 1982.</p>
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<p>1 A. Uh-huh.</p> <p>2 Q. -- from the Locust Fork. To your</p> <p>3 knowledge, has anything like that ever been</p> <p>4 attempted?</p> <p>5 A. No, sir, I'm not aware that</p> <p>6 anything like that was done anywhere. I don't</p> <p>7 know.</p> <p>8 Q. To your knowledge, has Drummond</p> <p>9 done any sampling out in the river in the</p> <p>10 Locust Fork on the bottom adjacent to the mine</p> <p>11 site to see if there is mine waste on the</p> <p>12 bottom of the river?</p> <p>13 A. I'm not aware that anything has</p> <p>14 been done.</p> <p>15 Q. Okay. Have you seen the core</p> <p>16 sampling has been done in this case by one of</p> <p>17 Riverkeeper's experts?</p> <p>18 A. Core samples? No.</p> <p>19 Q. Do you know what core sampling is?</p> <p>20 A. Core sampling?</p> <p>21 Q. Yes, just taking core samples --</p> <p>22 A. Yes.</p> <p>23 Q. -- from the bottom of the river?</p>	<p>1 A. Okay.</p> <p>2 Q. Have you ever seen this document</p> <p>3 before?</p> <p>4 A. I have, yes, as a part of the ASMC</p> <p>5 permit, you know, that was put together for</p> <p>6 Maxine. I have seen this.</p> <p>7 Q. All right. If you would, turn to</p> <p>8 page 219. And if you will look at page 219</p> <p>9 through 220 under the heading Area 2, there is</p> <p>10 a discussion about the -- what it refers to as</p> <p>11 the active coal processing waste bank --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- which I believe to be the mine</p> <p>14 dump area we have been talking about. Could</p> <p>15 you just read through that and tell me if you</p> <p>16 believe that that is the case?</p> <p>17 A. Well, let's see.</p> <p>18 MR. DAVIS: Tell him what you</p> <p>19 know, not what you believe.</p> <p>20 A. I'm just going by what is in here.</p> <p>21 This is a supplement to the permit. It looks</p> <p>22 like it is more about adding on the new coarse</p> <p>23 refuse disposal area and -- that ties in adding</p>

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<p>1 Pond 23.</p> <p>2 Q. At the top of page 220, it talks</p> <p>3 about until a new site which it calls Area 1 is</p> <p>4 approved in construction for waste disposal.</p> <p>5 Do you know if that Area 1 was ever approved</p> <p>6 and constructed?</p> <p>7 A. I don't know, other than --</p> <p>8 THE DEPONENT: Richard, you see</p> <p>9 what it says here, so --</p> <p>10 MR. DAVIS: What's the question?</p> <p>11 Q. (BY MR. BROCK:) I will ask</p> <p>12 another question. Can you tell by reading the</p> <p>13 top paragraph if that is talking about</p> <p>14 reclaiming what we looked at today and talked</p> <p>15 about as the post-law capped area?</p> <p>16 A. It appears that that is what they</p> <p>17 would be talking about, yes, sir.</p> <p>18 Q. And it says that they were going</p> <p>19 to cover it with one foot of clay. Do you know</p> <p>20 if that is actually what was done in that area?</p> <p>21 A. I don't know if that's what was</p> <p>22 done, but, you know, from seeing some of the</p> <p>23 pictures and some of the schematics from</p>	<p>1 dated October 26, 1982. Do you see where it</p> <p>2 says question number one and it is asking for</p> <p>3 information about re-vegetation of the, quote,</p> <p>4 old rock dump areas?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And the new rock dump area, right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. All right. Do you read that to be</p> <p>9 a reference to the pre- and post-mine dump</p> <p>10 areas that we have been talking about today?</p> <p>11 A. It appears to be the case.</p> <p>12 Q. And then under the comment</p> <p>13 section, it says as to both the old and the new</p> <p>14 section that they are going to put topsoil on</p> <p>15 each section; do you know if that was ever done</p> <p>16 as to the old section?</p> <p>17 A. I do not know.</p> <p>18 Q. Have you ever seen any evidence of</p> <p>19 topsoil being used to cover the old --</p> <p>20 A. The pre-law.</p> <p>21 Q. Yes, sir.</p> <p>22 A. No, sir, I see no evidence of</p> <p>23 that.</p>
<p>1 earlier, aerial from earlier, it appears that</p> <p>2 there was soils, clay material, you know, that</p> <p>3 was put on it and from what had been described</p> <p>4 as yes, and then that was vegetated, treated</p> <p>5 and vegetated.</p> <p>6 Q. So the answer is yes?</p> <p>7 A. I would say yes.</p> <p>8 Q. In the next paragraph down they</p> <p>9 mention a diversion ditch; do you see that</p> <p>10 part --</p> <p>11 A. Yes, sir.</p> <p>12 Q. -- to divert surface water runoff</p> <p>13 from the old refuse pile. It is my</p> <p>14 understanding that is referring to the area we</p> <p>15 looked at earlier, the pre-law area in the east</p> <p>16 diversion ditch; is that your understanding of</p> <p>17 this?</p> <p>18 A. It would appear to be -- that</p> <p>19 would be correct. It appears this is a takeoff</p> <p>20 of the PELA report.</p> <p>21 (Plaintiff's Exhibit 56 was marked</p> <p>22 for identification.)</p> <p>23 Q. All right. Showing you Exhibit 56</p>	<p>1 Q. Second item, B, it says the soil</p> <p>2 surface will be scarified with a disk?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What does that mean?</p> <p>5 A. You know how a disk is used. I</p> <p>6 mean, to scarify, I mean, you are tilling up</p> <p>7 the surface layer of the soil.</p> <p>8 Q. All right. Was that ever done as</p> <p>9 to the pre-law area?</p> <p>10 A. I don't know. This would have --</p> <p>11 some of this would be the type work that we</p> <p>12 would have later contracted with them, you</p> <p>13 know, would have involved, you know, the</p> <p>14 application -- when we applied lime, well,</p> <p>15 then, you know, they had a contractor out there</p> <p>16 that was doing scarification and everything</p> <p>17 according to the recommendations.</p> <p>18 Q. I'm trying to make sure that I</p> <p>19 understand everything as best I can, everything</p> <p>20 that was done, in terms of reclamation or</p> <p>21 treating that pre-law area. And so what I am</p> <p>22 asking is, you know, for your knowledge and</p> <p>23 best recollection about anything that was done.</p>

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<p>1 A. Well, I have -- I have no 2 recollection whatsoever, because I never was on 3 that site during this time where these 4 questions are coming up.</p> <p>5 Q. Okay. But from what I understand, 6 you are saying you saw it a few years later?</p> <p>7 A. Yes, some of the work that is 8 being mentioned here would be work that I saw 9 on some of the area that would have been done 10 in '84 -- late '84 or into '85.</p> <p>11 Q. Okay. With Mr. Muncher, we had 12 Exhibit 19, some photos that we believe are 13 from the '80s. Don't know exact date, but does 14 that look like the pre-law pile in the '80s 15 when you first saw it or not?</p> <p>16 A. I didn't see -- I didn't see these 17 areas down there when I would have been there 18 in the '80s.</p> <p>19 Q. For the record, this is Drummond 20 2933. So you are saying you just never went to 21 that area of the mine site?</p> <p>22 A. That's correct.</p> <p>23 Q. This is another photo, 2959; you</p>	<p>1 Q. What does the breaker rock area 2 refer to?</p> <p>3 A. I don't know where a breaker rock 4 area would have been at Maxine. I mean, I know 5 what breaker rock is, but I don't know what 6 area they would have been talking about.</p> <p>7 Q. Okay. This document sets forth 8 some reclamation activity that includes grading 9 and contouring in item B, covering with clay in 10 item D, removing the solids from the two 11 sediment basins in item J, for a grand total of 12 two hundred sixteen thousand dollars in 1983 13 dollars; do you know if any of that work was 14 ever done for the old refuse pile?</p> <p>15 A. I do not know. 16 (Plaintiff's Exhibit 58 was marked 17 for identification.)</p> <p>18 Q. This is another memo from 1983. 19 On the second page of the old refuse site 20 section, if you will just look at that, it has 21 got seven items. Just look at it and tell me 22 if you know if any of those things were done to 23 the pre-law area.</p>
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<p>1 never saw the area when it looked like that?</p> <p>2 A. No, sir.</p> <p>3 Q. Does that look like it has been 4 reclaimed?</p> <p>5 A. No, sir.</p> <p>6 Q. How about that photo, 2963, did 7 you ever see the waste pile look like that?</p> <p>8 A. No.</p> <p>9 Q. When was the first time that you 10 would have gone to that area of the mine?</p> <p>11 A. It would have been -- are you 12 talking about the old area that you are showing 13 me --</p> <p>14 Q. Yes, sir.</p> <p>15 A. It would have been after y'all 16 filed this lawsuit.</p> <p>17 (Plaintiff's Exhibit 57 was marked 18 for identification.)</p> <p>19 Q. I show you Exhibit 57; this is 20 another document that relates to that from 21 1983. It says it is an estimate to reclaim the 22 old refuse and breaker rock areas.</p> <p>23 A. Uh-huh.</p>	<p>1 A. (Reviewing document.) I don't 2 know. 3 MR. DAVIS: Can we take about two 4 minutes?</p> <p>5 MR. BROCK: Yes. 6 (Whereupon, a break was had from 7 5:52 p.m. until 5:57 p.m.) 8 (Plaintiff's Exhibit 59 and 9 Plaintiff's Exhibit 60 were marked 10 for identification.)</p> <p>11 Q. (BY MR. BROCK:) Number 59 is an 12 analysis from PELA from 1983. And on page 433 13 of that document, there is some monitoring data 14 from 1983, surface and groundwater. Have you 15 reviewed any of that data?</p> <p>16 A. No, sir. 17 Q. Okay. You don't have any reason 18 to believe that data isn't accurate, do you?</p> <p>19 A. No, sir. 20 Q. Hold up Number 60 -- go ahead, 21 were you going to say something?</p> <p>22 A. No. 23 MR. DAVIS: No question, so he</p>

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<p>1 wasn't going to say a thing.</p> <p>2 A. Just pointing out something.</p> <p>3 (Reviewing document.)</p> <p>4 Q. (BY MR. BROCK:) This memo in</p> <p>5 Number 60 is from Mr. Musick. He talks about</p> <p>6 an inspection in 1983 of some damage to the</p> <p>7 ponds and diversion ditches from heavy</p> <p>8 rainfall. Have you seen any instances where</p> <p>9 heavy rainfall has damaged those structures on</p> <p>10 the site?</p> <p>11 A. No, sir.</p> <p>12 Q. In the second paragraph they talk</p> <p>13 about the limestone filter and the dam being</p> <p>14 clogged. I believe you testified earlier you</p> <p>15 didn't know anything about the limestone filter</p> <p>16 and the dam, is that correct?</p> <p>17 A. You asked if I knew if that had</p> <p>18 been installed or not, and I said I did not</p> <p>19 know.</p> <p>20 Q. Have you ever seen a situation</p> <p>21 where the limestone filter was clogged in the</p> <p>22 manner they are describing in the memo?</p> <p>23 A. With what you had described and</p>	<p>1 Q. No, I am considering whether I</p> <p>2 have a question about it or not.</p> <p>3 MR. DAVIS: You don't.</p> <p>4 A. Was there any questions on 60,</p> <p>5 anything else?</p> <p>6 Q. No.</p> <p>7 (Plaintiff's Exhibit 61 was marked</p> <p>8 for identification.)</p> <p>9 Q. Have you got a 61 over there?</p> <p>10 A. Yes, sir.</p> <p>11 Q. I don't have any questions about</p> <p>12 that other than just to note that is Drummond</p> <p>13 2278.</p> <p>14 (Plaintiff's Exhibit 62 was marked</p> <p>15 for identification.)</p> <p>16 Q. Have you got a 62 over there?</p> <p>17 A. It's right here.</p> <p>18 Q. Okay. My question about this is</p> <p>19 down at the bottom it says Bill Gibson; do you</p> <p>20 see that part?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Who is Bill Gibson?</p> <p>23 A. He was a -- he was an inspector at</p>
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<p>1 what they are describing here, I have never</p> <p>2 seen a filter like this used. I'm not familiar</p> <p>3 with what they did here, if that's what they</p> <p>4 did.</p> <p>5 Q. In the next paragraph they are</p> <p>6 talking about the dam. It says the second pond</p> <p>7 in the river, which I interpret to be that</p> <p>8 upper dam we looked at; would you interpret it</p> <p>9 that way?</p> <p>10 A. Yes.</p> <p>11 Q. And they say at that point in time</p> <p>12 that the spillway is eroded both to the point</p> <p>13 where no water is impounded behind the dam?</p> <p>14 A. Yes, sir.</p> <p>15 Q. To your knowledge, has the dam</p> <p>16 been repaired since then, since 1983, in a</p> <p>17 manner that would remedy that situation?</p> <p>18 A. It says plans are to raise this</p> <p>19 dam. I don't know if that was done. I assume</p> <p>20 that it was. And past that period, if there</p> <p>21 was anything done, no, I have no idea.</p> <p>22 Q. In the last paragraph --</p> <p>23 A. What? The last paragraph what?</p>	<p>1 ADEM.</p> <p>2 Q. Okay. It says that he insinuated</p> <p>3 -- and I don't know -- well, can you tell whose</p> <p>4 handwriting that is?</p> <p>5 A. Well, it says TM, so that would be</p> <p>6 Tom Musick.</p> <p>7 Q. It says he insinuated that a NPDES</p> <p>8 permit may be required for the limestone filter</p> <p>9 and diversion ditch in the number one dam; do</p> <p>10 you see that part?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And this was in 1983. Were</p> <p>13 you ever privy to any discussions about</p> <p>14 possibly having to permit that outfall or</p> <p>15 discharge from the lower dam?</p> <p>16 A. No, sir.</p> <p>17 Q. Do you know how this was</p> <p>18 ultimately worked out or negotiated with ADEM?</p> <p>19 A. No. I do see that it says this</p> <p>20 wasn't a part of the agreement assigned by Joe</p> <p>21 Myers. So --</p> <p>22 Q. Do you know what the agreement</p> <p>23 was --</p>

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<p>1 A. No.</p> <p>2 Q. -- or consisted of?</p> <p>3 A. Never seen an agreement. Did not</p> <p>4 know there was an agreement.</p> <p>5 (Plaintiff's Exhibit 63 was marked</p> <p>6 for identification.)</p> <p>7 Q. Okay. Exhibit 63.</p> <p>8 A. (Reviewing document.)</p> <p>9 Q. I don't have a question about</p> <p>10 that. Just note that is Drummond 2277.</p> <p>11 A. Did you not show this same thing</p> <p>12 to me here a little bit earlier?</p> <p>13 Q. Possibly.</p> <p>14 A. Okay. I'm thinking you did.</p> <p>15 Q. I'm going to start doing that. It</p> <p>16 loops back around. You never escape.</p> <p>17 (Plaintiff's Exhibit 64 was marked</p> <p>18 for identification.)</p> <p>19 Q. I handed you Exhibit --</p> <p>20 A. Was there any question about that?</p> <p>21 Q. No, sir.</p> <p>22 A. (Reviewing document.)</p> <p>23 Q. Okay. This is a memo from ADEM to</p>	<p>1 for identification.)</p> <p>2 Q. All right. I handed you what is</p> <p>3 marked Exhibit 66. This is a letter from Mr.</p> <p>4 Cook to Richard Simon at Southern Company</p> <p>5 Services, December 8th, 1983.</p> <p>6 A. So this is the same as what 65 is</p> <p>7 only they removed "draft" from it, is that</p> <p>8 correct?</p> <p>9 Q. I don't think so.</p> <p>10 A. Is it not?</p> <p>11 Q. Different format. Yeah, it</p> <p>12 doesn't have the same handwritten stuff on it.</p> <p>13 But the body of it is the same, substantially</p> <p>14 the same?</p> <p>15 A. That's what I meant.</p> <p>16 Q. All right. In the fifth paragraph</p> <p>17 on this page down at the bottom, it talks about</p> <p>18 a meeting in 1983 with ADEM; will you read</p> <p>19 that?</p> <p>20 A. Yes, sir, I see that.</p> <p>21 Q. Do you have any knowledge or</p> <p>22 information about that meeting?</p> <p>23 A. No, it just says that they --</p>
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<p>1 Moyer Edwards. If you will turn to page 703 --</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- and it indicates there below</p> <p>4 S-2 that ADEM was looking at the pre-law area</p> <p>5 and discharges to the Warrior River around it.</p> <p>6 Do you know why ADEM was sampling from that</p> <p>7 location?</p> <p>8 A. No, sir.</p> <p>9 (Plaintiff's Exhibit 65 was marked</p> <p>10 for identification.)</p> <p>11 Q. Okay. Exhibit 65 I have handed</p> <p>12 you; it is a memo from December of 1983. If</p> <p>13 you go down to the fourth paragraph there --</p> <p>14 A. Okay.</p> <p>15 Q. And this is written by Mr. Cook.</p> <p>16 It talks about some external pressure, that</p> <p>17 ADEM has informed ABC that they may have to get</p> <p>18 a NPDES permit for the outflow through the</p> <p>19 limestone filter which relates to what we were</p> <p>20 looking at a little bit earlier. Do you know</p> <p>21 what that is a reference to?</p> <p>22 A. No, sir.</p> <p>23 (Plaintiff's Exhibit 66 was marked</p>	<p>1 MR. DAVIS: Do you have any</p> <p>2 knowledge about that meeting?</p> <p>3 A. No, I have no knowledge.</p> <p>4 Q. (BY MR. BROCK:) And this -- the</p> <p>5 subject matter of this again is about ADEM</p> <p>6 saying you may have to get a permit for the</p> <p>7 outflow down to the lower dam. You told us you</p> <p>8 don't have any information about that?</p> <p>9 A. No, sir.</p> <p>10 Q. You don't know how this got</p> <p>11 negotiated or resolved?</p> <p>12 A. No, sir, no idea.</p> <p>13 (Plaintiff's Exhibit 67 was marked</p> <p>14 for identification.)</p> <p>15 Q. Okay. I handed you what I marked</p> <p>16 Exhibit 67 which is -- starts at Drummond 144</p> <p>17 and goes through 197. This is a study done by</p> <p>18 PELA in 1984 which we will ask them about, but</p> <p>19 if you will turn to page 161 in there, it</p> <p>20 starts with the section about monitoring, some</p> <p>21 work they were doing out there to sample ground</p> <p>22 and surface water. Have you seen this report</p> <p>23 before?</p>

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1 A. This is some of the info that was 2 in Mr. Muncher's work file, I believe.	1 question, do you think this is the pre-law area 2 we are looking at, it isn't, or you don't know?
3 Q. Yes, or it is very similar. Looks 4 like they were periodically doing sampling and 5 the same type data, anyway. On page 15, it has 6 some of their sampling results. Have you 7 looked at these sampling results and data 8 before?	3 A. I don't know. 4 Q. Okay. 5 A. I'm sorry, I could have said that 6 a lot sooner.
9 A. Just -- I might have skimmed 10 through some of this, but as far as looking at 11 it, no.	7 Q. That's fine. I wanted you to look 8 through it and take all the time you wanted.
12 Q. Anything stand out to you about 13 it?	9 MR. BROCK: Okay, I think that's 10 all the questions I have. Thank you for your 11 patience. I'm sorry we ran a little long.
14 A. No.	12 13 14 FURTHER THE DEPONENT SAITH NOT 15 16 (Deposition was concluded at 6:20 p.m.)
15 Q. Surface water and groundwater 16 about what you would expect?	17 18 19 20 21 22 23
17 A. I wouldn't know.	
18 Q. One last thing. This is Exhibit 19 40 to Mr. Muncher's deposition, and it is a 20 reclamation related document that was written 21 by Jim Darden in 1985, which you might have 22 been working on stuff out there. Have you seen 23 this report before?	
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1 A. I just saw it as a part of the 2 info that was in Mr. Muncher's -- it is Mr. 3 Muncher's, so, yes, I have seen this -- I have 4 skimmed through it in the last twenty-four, 5 thirty-six hours.	1 DEPONENT'S CERTIFICATE 2 3 I, DWIGHT HICKS, the witness herein, 4 have read the transcript of my testimony and 5 the same is true and correct, to the best of my 6 knowledge. Any corrections and/or additions, 7 if any, are listed separately.
6 Q. Okay. And we asked him some 7 questions about certain parts of it and whether 8 he agreed or disagreed with it. My question to 9 you is, having reviewed it, can you tell what 10 area of the mine site he is talking about 11 specifically in this report when he identifies 12 on page Drummond 3700 the thirty-four acre 13 pre-law spoil disposal area?	8 9 10 DWIGHT HICKS 11 c/o Mr. Richard E. Davis 12 Attorney at Law 13 Starnes Davis Florie, LLP 14 7th Floor, 100 Brookwood Place 15 Birmingham, Alabama 35209 16 205.868.6000 17 rdavis@starneslaw.com
14 A. (Reviewing document.)	14
15 MR. DAVIS: Do you know?	15
16 A. No, I don't know specifically.	16 Sworn to and subscribed before me, this
17 Q. (BY MR. BROCK:) Do you know if 18 this is the area we have been looking at on 19 Exhibit 7 and referring to as the pre-law mine 20 waste or mine dump?	17 the day of , 2018, to certify 18 which witness my hand and seal of office.
21 A. I don't know that for absolute 22 certainty. (Reviewing document.)	19 20 21 22
23 Q. So I guess to reiterate the	23 NOTARY PUBLIC

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1 C E R T I F I C A T E

2

3 STATE OF ALABAMA

4 JEFFERSON COUNTY

5

6 I hereby certify that the above
7 and foregoing deposition was taken down by me
8 in stenotypy, and the questions and answers
9 thereto were reduced to typewriting under my
10 supervision, and that the foregoing represents
11 a true and correct transcript of the deposition
12 given by said witness upon said hearing.

13 I further certify that I am
14 neither of counsel nor of kin to the parties to
15 the action, nor am I in anywise interested in
16 the result of said cause.

17

18

19

20 /s/ Gail B. Pritchett
21 COMMISSIONER-NOTARY PUBLIC
22 ACCR LICENSE NO. 116, Exp. 9/30/2018
23 Transcript Certified On 6/11/2018

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Deposition of:

Dwight Hicks-234447

Taken:

6/6/2018

Court Reporter:

Gail B Pritchett

Page #:

Line #:

Correction/Reason for change:

<u>17</u>	<u>12</u>	"surface effects", not circumspect
<u>29</u>	<u>3</u>	"coarse", not porous
<u>79</u>	<u>12</u>	should be "2016"
<u>168</u>	<u>21</u>	should be "receiving"
<u>180</u>	<u>11</u>	should be "load out"
<u>218</u>	<u>3</u>	should be "rill"
<u>223</u>	<u>8</u>	should be "forces"
<u>253</u>	<u>20</u>	should be "slate"